DIVORCE

A STUDY IN SOCIAL CAUSATION

BY

JAMES P. LICHTENBERGER, A. M.

Assistant Professor of Sociology, University of Pennsylvania

SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS
FOR THE DEGREE OF DOCTOR OF PHILOSOPHY
IN THE
FACULTY OF POLITICAL SCIENCE
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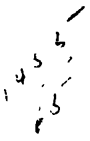

PREFACE

PROPORTIONATELY with the rapid increase of divorce throughout the civilized world in modern times, and particularly in the last fifty years, has the subject of divorce engaged the attention of thinking men—moralists, theologians and statesmen. For the most part, it has been apprehended as an isolated phenomenon due to specific causes and regarded as a sign of moral degeneracy. Purposive efforts to check the movement have centered in more rigid enforcement of ecclesiastical discipline and in more stringent enactments and administration of civil law. Despite these efforts the divorce rate has continued to increase with accelerated velocity.

Assuming with many students of social science that the phenomenon is rather but one aspect of a general social movement whose roots lie deep in the soil of physical and psychical processes and is not amenable, therefore, to the external forces of social control, we have pursued this investigation in order to ascertain the validity of this assumption. The conclusions set forth herein are the result.

Believing that we could contribute most to the proper understanding of the subject as a whole by an intensive study of some specific field of observation, we have limited our task to an interpretation of the facts exhibited in Continental United States for a period of forty years, 1867-1906, for which the data are most readily accessible.

Of special value have been the *History of Matrimonial Institutions* by Professor Howard, *The Divorce Problem*,

a Study in Statistics by Professor Willcox, and the Federal Reports on *Marriage and Divorce.*

Indebtedness is acknowledged gratefully to Professor Franklin H. Giddings, of Columbia University, for important suggestions made from time to time while this monograph has been in preparation, and for assistance in reading proofs, to Myra Grigg Anderson, A. M., of New York, for valuable aid in the correction of the manuscript, to Joseph A. Hill, Ph. D., of the Census Office, for the promptness and courtesy with which he has answered all my communications, and to my wife for sympathetic interest and help, but for which the completion of the work would have been delayed indefinitely.

J. P. L.

The University of Pennsylvania, September, 1909.

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CHAPTER I

INTRODUCTION

IMPORTANCE OF THE SUBJECT

THE two Federal reports on "Marriage and Divorce"[1] comprise a complete statistical survey of these subjects in the United States for a period of forty years, 1867-1906. During this time 1,274,341 divorces were granted, 328,716 in the period of the first report, 1867-86, and 945,625 in the period covered by the second, 1887-06. There were 9,937 granted in 1867, and 72,062 in 1906. Grouped in five, ten, and twenty year periods we have the following:

1902-1906....332,262.	593,362.		
1897-1901....260,720.		945,625.	
1892-1896....194,939.	352,263.		
1887-1891....157,324.			
1882-1886....117,311.	206,595.		
1877-1881.....89,284.		328,716.	
1872-1876.....68,547.	122,121.		
1867-1871.....53,574.			

From these figures it is readily perceived that there is an upward divorce movement which is both persistent and

[1] *A Report on Marriage and Divorce in the United States, 1867-86*, by Carroll D. Wright, Commissioner of Labor; and, *A Special Report on Marriage and Divorce, 1867-1906*, by the Bureau of The Census, S. N. D. North, Director.

rapid. The number of divorces enumerated in the second report is almost three times that of the first, while more than seven times as many divorces were granted in 1906 as in 1867.

What is the interpretation of the phenomenon here exhibited? Temperament and training determine largely the point of view taken.

To a large group of thinkers who reason more or less deductively from certain assumed premises, the present divorce situation indicates that the family is undergoing a rapid process of disintegration, which seriously endangers its permanent existence. They regard the divorce movement as an integral part of a general trend of social degeneration which threatens the family, along with other social institutions, with ultimate extinction. The causes of this retrogressive process, they assume, are located in the increasing perversity of human nature, which is so serious as to menace the very foundations of the social order. Specifically, in respect to divorce, they hold that increasing laxity in framing and administering the law, and growing disregard for the sanctions of custom, tradition, and religion, constitute an increasing peril to the family which is strikingly exhibited in the rising divorce rate. The remedy proposed, is the urgent awakening of the individual conscience and the speedy enactment of such reformatory laws as will guarantee the suppression of the evil and the maintenance of the existing order.

To this group belong the alarmist, the professional reformer, and the moral and religious dogmatist. To them divorce presents an evil vast and perilous, for which a remedy must hastily be found.

To a smaller, but rapidly increasing number, this analysis of the situation is unsatisfactory. This group seeks to go a little deeper, by the use of inductive methods, into the

question of causation. It is making scientific inquiry into the reasons for this seemingly rapid change in human nature which is modified ordinarily only by long-continued processes. These persons are seeking to determine whether the phenomena we are witnessing in society may not be the result of environmental changes. It may be, they assert, that in the readjustment of society to the new basis of our modern civilization mal-adjustments occur which tend to disrupt the home. It is possible that the increasing divorce rate is the result of transitions due to progress. Investigations may reveal the fact that the family to-day is not internally coherent, and with the lessening of many of the former restraints inherent in the patriarchal theory of the family and the sacramental idea of marriage, together with the removal of some of the external props supplied by former social and economic conditions, it is simply falling apart because it lacks moral and spiritual cohesion.

To this group belongs the sociologist whose primary interest is the scientific investigation of the facts. He may seriously inquire whether the freer granting of divorces is an evil.[1] To him the divorce movement presents simply a most interesting phenomenon to be studied, analyzed, and explained.

In the very opening of this discussion, we desire that our point of view should be clearly understood. It is frankly that of the sociologist. This attitude enables us to approach the subject without prejudice, and without commitment to any policy with regard to its treatment. In this way we shall be able to examine whatever sources are available with fairness and to deal with the facts as we find them in a scientific spirit.

[1] *Papers and Proceedings of the American Sociological Society*, vol. iii, p. 150.

THE NATURE OF THE SUBJECT.

The institution of the family is not a ready-made gift to civilization, but a social product. "Those in our day who talk so much about the sacredness of marriage can know but little about its history."[1] Marriage is the legal sanction of the social custom of the family. It is the institutionalizing of those restricted forms of sexual intercourse between men and women which have existed everywhere in human society. The family founded upon these relations has assumed a variety of forms, chief among which are polyandry, polygyny, and monogamy. By the word family, Professor Ward says, "We need not, any more than in the case of marriage, understand any of the developed forms, but simply the customary way of raising children and the relation among kindred generally."[2]

Marriage does not depend upon external authority either for its institution or for its perpetuation. It rests upon the inherent nature of society and the individuals who compose it. No human group, however primitive in culture, which has been subjected to careful study, has been found to be devoid of regulated marital relationships, and the higher the degree of culture, the more clearly defined do these relationships become.

Nothing is more discouraging to the reactionary reformer, and at the same time more encouraging to the scientific philanthropist, than the fact that society follows no arbitrarily-formed program for its development, but proceeds by natural laws of social evolution. The twofold bearing of this fact is at once apparent.

The recognition of this positive principle of human development, this fundamental, evolutionary process, in so-

[1] Caird, *The Morality of Marriage*, p. 79.

[2] *Pure Sociology*, p. 186.

ciety as in every other portion of the universe, opens the social realm to scientific study. It affords what August Comte calls "scientific prevision," where "we abandon the region of metaphysical idealities to assume the ground of observed realities by a systematic subordination of imagination to observation."[1] This method prophesies interpretations in social phenomena in harmony with the facts of life and promises no less compensation for thoroughgoing investigation than that afforded in other fields. In thus making possible a science of society, a new basis for the study of divorce is offered, which permits the subject to be studied as a matter of human interest without the bias of the social reformer.

Rightly considered, this fact gives us poise in the midst of changes which, to many, seem to threaten the existing order. If the institution of the family were a discovery and not a growth; if it rested on the uncertain exigencies of external authority and not on the inherent necessities of human nature; then it might be in imminent danger of passing away with the power that created it. If, therefore, the family in its present form seems in danger, it is reassuring to know that it rests on no such insecure foundation, that in the form best suited to the needs of humanity it has existed at all times and everywhere. If future investigations shall confirm present opinions, that the tendency is toward permanent monogamy, that the marriage of one man and one woman in a lifelong union is the ultimate form toward which the long process of the ages is slowly but surely tending, then we shall be fortified against alarm at any temporary aberration in which the current seems to be deflected from its course.

It would not be a new experience in the history of hu-

[1] *Positive Philosophy*, vol. ii, p. 73.

manity, if we should discover that what to-day seem to be retrograde tendencies should finally turn out to be steps toward progress. Not infrequently have phenomena been attributed to causes other than those which have produced them. This has happened quite often in the early efforts to interpret physical phenomena, and until we are more familiar with the laws of social causation, mistakes are as likely to be frequent in the explanation of social facts.

THE SPIRIT OF THE AGE.

The martyr of the passing age is often the prophet of the new. What Comte and Spencer saw so clearly in regard to new methods of study in the realm of social science, as in all others, and expressed so fearlessly, regardless of the criticism these views provoked, is rapidly becoming the accredited philosophy of our day. The spirit of our age is dominantly scientific. The physical sciences, such as astronomy, geology, and chemistry have long since passed over from the realm of the theologico-metaphysical interpretation to the scientific. The social sciences, such as history, economics, and sociology lag behind the physical, only in certain aspects of the popular mind.

Professor Giddings phrases the scientific attitude for the whole field of social science when he says:

> He would be a bold man who today, after a thorough training in the best historical scholarship, should venture to put forth a philosophy of history in terms of the divine ideas, or to trace the plan of an Almighty in the sequence of human events. On the other hand, those interpretations that are characterized as materialistic, and that try to find the causes of social evolution in the action of the physical environment, or that, seeking explanation in the tremendous process of the struggle for existence, find an interpretation in the circum-

stances of man's economic life, are daily winning serious respect.[1]

Too long have certain elements of our social organism enjoyed the peculiar protection of religious sanctions! Too slow have we been to recognize that human society is a part of the great cosmic universe, that it is subject to the same laws, and that it manifests the same order of sequences to be found in every other realm! It will be a happy day for humanity when the scientific spirit shall dictate in the formation of all its ideals, institutions, and laws.

Speaking of divorce, Lecky says: "There is probably no other branch of ethics which has been so largely determined by special dogmatic theology, and there is none which would be so deeply affected by its decay". [2] Even as late as 1869, when Mr. Lecky published his volumes, public sentiment in regard to social questions in general, rested to a large degree, upon opinions established by dogmatic theologians. Theirs was the dominating influence in shaping legislation and other forms of control.

It is worse than useless to attempt the consideration of the subject of divorce to-day by means of categories of thought and ethical standards in vogue a half-century ago. Such a course would lead inevitably to dogmatizing as ineffectual as it is antiquated. What is needed is to bring the subject out into the open, to throw upon it the same white light of scientific criticism and investigation to which we subject the facts of our modern political and industrial life, let the consequences be what they may.

We have no interest in the preservation of erroneous

[1] *Publications of the American Economic Association*, Third Series, vol. v, no. 2, p. 142.

[2] *History of European Morals*, vol. ii, pp. 371-2.

ideas however cherished they may be. We have arrived at the sincere conviction that ethical and social gains are contingent upon a better knowledge of the truth. The paramount need of our age, morally, is that "Moral leaders of men should preach actual instead of conventional social righteousness."[1] This attitude toward truth is the most hopeful sign of our time, and promises most for the help of humanity in the future. Foundations are being examined that the superstructure of society may be reared, not only with great stability, but with larger guarantee that it will conserve the interests of all its members. The futility of the attempt to construct the physical causes of a social phenomenon on the basis of abstract speculation, has been abundantly demonstrated by much of the current literature of our subject.

PURPOSE AND SCOPE OF THIS TREATISE

The specific task set for this investigation lies within the scope indicated by the preceding sections. We disclaim any attempt to deal exhaustively with so comprehensive a field of social study. Deeply interested in the study because of its growing importance in our modern life, we have undertaken the somewhat limited task of inquiring into the causes of the rise of the divorce rate, which is manifestly out of all proportion to the causes usually assigned. We have sought to carry on the investigation in the characteristic temper of our time, to inquire carefully into the facts, and to form our hypotheses and conclusions according to the modern methods of inductive research.

Chapters II to IV inclusive deal with historical material which reveals the nature of the subject. By tracing the origin of divorce in primitive society, by exhibiting it as

[1] Howard, *History of Matrimonial Institutions*, vol. iii, p. 224.

it appears in a few of the ancient codes, and by noting how its status has been modified from time to time by the developments of more recent centuries, we have established its purely social character, and demonstrated that it has been from earliest times a subject with which men have felt called upon and competent to deal as their needs required.

Of the mass of available statistics, we have presented, in Chapter V, only such as have direct bearing upon our specific task, and which furnish the data which seem to call for an explanation not found within the facts themselves. The period studied is that covered by the two Federal reports of 1867-86 and 1887-1906.

Three chapters, VI, VII, and VIII, are devoted to a survey of civil and ecclesiastical legislation bearing upon the subject of divorce, and to a demonstration of the utter inefficiency of law, civil or ecclesiastical, to control the divorce rate.

In Chapters IX to XIII inclusive, we have sought for the interpretation of the remarkable increase in the frequency of divorce which the statistics reveal. We have searched diligently for the causes which lie back of the statutory grounds upon which divorces are obtained. These have been found to reside chiefly in dynamic changes in the social environment. In the United States, which has been our specific field of observation, three great fundamental transformations have occurred, whose chief characteristic effects have fallen within the period from our great civil war to the present time. This is virtually the period covered by the Federal statistical reports on marriage and divorce. These transformations have been, our unprecedented economic development, our unparalleled achievements in social progress, and our remarkable transition in ethical and religious views. These great changes, with their con-

sequent difficulties of readjustment, furnish, we believe, ample explanation for the phenomenon we are studying.

In the last chapter we have presented a few observations bearing upon the future, which seem to be legitimate inductions from the course of events portrayed.

It should carefully be noted that the task we have defined is an objective inquiry into social facts and conditions, with a view to their accurate description, and has nothing to do primarily with utilitarian ends. The subject has not been studied with reference to any theory of what ought to be. We have simply been concerned with the facts as they are. Our effort has been accurately to diagnose the social situation in respect to the subject of divorce, from which we have sought rigidly to exclude all therapeutic treatment.

CHAPTER II

Primitive Society

THE ORIGIN OF DIVORCE

Divorce is a social phenomenon. As the counterpart of marriage, it cannot be considered apart from it. In seeking the origin of divorce, therefore, we pursue the method employed in the investigations relative to marriage. In the beginning of his masterful work on *The History of Matrimonial Institutions,* Prof. Howard says: "Marriage is a product of social experience. Hence to understand its modern aspects, it is needful to appeal to the general sociological facts surrounding its origin and its early history among the races of mankind." [1] Only by treating the subject of divorce in the same way shall we be able to view its present aspects with intelligent comprehension. Marriage originated in the primitive relations of the sexes. In the natural-history stage of human development, these relations are unregulated by institutions and ideas we commonly regard as natural. The sexes cohabit in a limited promiscuity. Human pairing often partakes of the transient nature exemplified among inferior creatures. Thus among both extant and extinct races, we find every degree of the duration of marriage from the single act of coition to the life-long union. Often the relation is so temporary as scarcely to deserve the name of marriage. Trial and time marriages not infrequently occur. Sometimes "Mar-

[1] Vol. i, p. 8.

riage is for a certain legally stipulated period which may vary from one hour to ninety-nine years."[1] A glance at these facts show that "marital relations, like political relations, have gradually evolved; that there did not at first exist those ideas and feelings, which among civilized nations give to marriage its sanctity."[2]

Now it is in these same facts that we find the starting-point of our investigation. Precisely in the same sense in which these temporary and transient relations of the sexes, characteristic of peoples of low degrees of culture, constitute the beginnings of marriage, the subsequent and frequent termination of these marriages constitutes the origin of divorce. From this beginning, in loosely restricted individual action, the history of marriage and divorce reveals the interesting processes by which they have passed in civilized communities, under the strictest regulation of the united forces of social control.

EARLY DEVELOPMENT

In the pre-legal period, marriage is often without ceremony and is restricted only by social custom. The husband and wife unite as a matter of choice, and as freely separate. Marriage is a temporary convenience to be dissolved at the pleasure of either party. Where rude marriage ceremonies exist, they are seldom more than a symbol, indicating the beginning of domestic relations, such as eating together, sitting by the same fire, or performing jointly some household duty. As society advances in culture, more permanent social, legal, and political forms are evolved, and the institution of the family shares in the general improvement. Upon this subject, Mr. Spencer remarks: "Progress toward

[1] Westermarck, *The History of Human Marriage*, p. 519.

[2] Spencer, *Principles of Sociology*, vol. i, pp. 615-16.

higher forms of social types is joined with progress towards higher types of domestic institutions," [1] and in perfect agreement Westermarck declares: "There is abundant evidence that marriage has, upon the whole, become more durable in proportion as the human race has risen to higher degrees of cultivation, and that a certain amount of civilization is an essential condition of the formation of life-long unions." [2] These generalizations are borne out by the facts of human progress. Very early, customs arise regulating the duration of marriage with consequent forms and ceremonies upon entrance into the marriage state.

In harmony with general progress, the family assumes a more permanent character without reference to the form in which it exists, and with the increase of regulative customs and ceremonies regarding marriage, the conditions of separation become more restricted and more clearly defined and begin to assume the nature of formal divorce. At first it may be little more than a voluntary separation. When custom and law begin to require publicity, they also begin to establish the method of procedure. In the beginning it usually involves a symbolic act, which indicates the nature of the transaction, as the turning of the offending party out of doors or of the throwing out of clothes. Sometimes it is a mere proclamation before witnesses. Again it must be settled by a council, either of the friends of the married pair or of the tribe, or it may require the judicial action of the chief. By slow but well-defined processes, it passes over, in more highly-developed societies, to a trial by the court and the writing of a "Bill of Divorcement". Not, however, until we reach the stage of general culture, where the family becomes a permanent institution, with its ideal

[1] Spencer, *ibid.*, vol. i, pp. 621-2.

[2] *Human Marriage*, p. 535.

of life-long companionship, does divorce become a remedial measure for the readjustment of the legal and social status of those whose marriage relations have broken down.

It is natural, then, that we should find in the different stages of the development of rude societies, various conditions in respect to the right of the individual to divorce. On this subject Post gives a most interesting summary:

In respect to divorce, the existing rights among different peoples of the earth, vary within the widest conceivable limits. There are cases in which the marriage tie may be dissolved at any time at the pleasure of either of the parties, and there are cases in which the relations are absolutely indissoluble. Between these opposing extremes, are found all conceivable intermediate stages. Sometimes the man only has a one-sided right of divorce, and sometimes the woman only. Sometimes a marriage separation is admissible only upon specified grounds, and these grounds may be different for the woman than for the man, or they may be the same. The character of marriage among different peoples is the chief influence in shaping the form of divorce right. In a weakly developed family organization, or in one on the point of decay, marriage is on either hand easily dissoluble. Under the reign of rape and wife purchase, the right of the wife to divorce, is as a rule, very contracted, that of the husband is often very extensive. Under political organization, and under the family organized on the basis of parental rights, special grounds for divorce customarily develop, which, when the wife is the equal born life companion of the man, are commonly alike for both parties, while, where they do not stand on an equal footing the grounds for divorce for each party are different. Thus:

1. Sometimes marriage is such a loose relationship that it may be dissolved at any time at the discretion of either party.

2. Sometimes marriage is absolutely indissoluble: only death can separate the married pair.

3. Sometimes marriage can be dissolved only by the agreement of the parties, while there are no other reasons for the separation.

4. Sometimes the husband has the right to divorce the wife at his pleasure, or if reasons are required, the most trivial ones are sufficient.

5. Sometimes the wife has also the right to separate at her pleasure, or where reasons are required, they may be of a most trivial nature.

6. That marriage can be dissolved only upon specified grounds is a widespread rule and indeed, while these grounds often differ for men and women, they are often the same.[1]

The frequency of early divorce depends upon the prevailing ideas concerning marriage. Where marriage is a voluntary relation of short duration, men and women marry and separate frequently in the course of a lifetime. This condition is frequently met with in rude societies.[2] Since an unmarried person in primitive society is a rare exception to the rule, the number of marriages and divorces is exceedingly high. As marriage grows to be a more permanent relation, death comes to terminate proportionately more marriages, and the number of divorces in proportion to marriages diminishes.

With the rise of marriage by capture and purchase, the wife becomes the chattel of her husband-owner, and divorce becomes his sole prerogative. He may do with her as he pleases. He is restrained, however, from the free exercise of his liberty by certain external considerations. Especially in case of purchase, there is always danger of blood-feud with his wife's tribesmen if his treatment is too severe. Economic reasons very early complicate matters. In the

[1] *Entwicklungsgeschichte des Familienrechts*, pp. 249-55.

[2] *Westermarck, op. cit., passim.*

absence of more refined restraints, his regard for his wife as a species of property is of consequence. His interest in her ceases if he divorces her. He is furthermore likely to suffer the loss of the purchase-price paid for her, and may be compelled to return any property she may have brought to him at the time of her acquisition. Under further progress, where wife-purchase is replaced by the payment of the "bride price" and the receipt of the "marriage portion," divorce is attended by still greater loss. It often involves the loss of a fortune. Unless divorce is for grave reasons, the husband is usually required to restore the dower, and sometimes to turn over all or part of his property and not infrequently to suffer the loss of his children. Where the wife is accorded the privilege of leaving her husband, unless it be for serious offense on his part, she is usually required to leave behind her dower and her children. Difficulties of self-support and disabilities of sex, have always made the part of the wife more difficult and compelled her to endure much, rather than leave her husband.[1]

Thus, as society arrives at a state of greater stability, the relation of the permanence of the family to that stability is perceived, and an intelligent conservatism in respect to divorce makes its appearance in many places. Property interests become an increasing factor in the stability of society, and marriage comes to rest less upon sexual instincts than upon economic conditions. Thus powerful influences are exerted to check the freedom of divorce and to increase the stability of the family.

[1] Howard, *Hist. of Mat. Inst.*, vol. i, p. 247 *et seq.* and Westermarck. *op. cit.*, p. 531 *et seq.*

THE FORM OF MARRIAGE AND ITS EFFECT ON DIVORCE

Having traced the origin of divorce in the primitive and transient nature of marriage, and noted some stages of its development in rude society, we now turn to see what bearing the various forms of marriage have upon divorce.

That the family has always been what it is to-day, is held only by those who are unfamiliar with the history of the institution. In regard to ancient forms, Prof. Howard says:

> The complex phenomena of human sexual relations, have been examined in the light of scientific criticism and recent research. The result seems unmistakably to show that pairing has always been the typical form of human marriage. Early monogamy takes its rise beyond the borderland separating men from the lower animals. But considering the aberrations from the type, development has been in a circle. At the dawn of human history, individual marriage prevails, though the union is not always lasting. In later stages of advancement, under the influence of property, social organization, social distinctions, and the motives to which they give rise, various forms of polyandry and polygyny make their appearance, though monogamy as the type is never superseded.[1]

In substantial agreement with this idea, we find other statements of Howard,[2] Spencer,[3] Starcke,[4] Westermarck,[5] and others.

Polyandry and polygyny have frequently existed where the conditions of life have rendered them expedient, but

[1] *Op cit.*, vol. i, p. 150.

[2] *Ibid.*, vol. i, pp. 222-3.

[3] *Prin. of Soc.*, vol. i, pp. 684-5.

[4] *The Primitive Family*, pp. 264-5.

[5] *Hist. of Human Marriage*, pp. 509-10.

they seem never to have become universal forms nor have they existed over wide areas. Polyandry is generally associated with sparse populations in unfriendly habitats. For the most part, it is confined to high altitudes or cold climates, where the struggle for existence is severe. Under these conditions, the family is more likely to survive where there are several men to support it. Polygyny is most frequently to be found in societies where economic advantage accrues to the man who possesses a plurality of wives on account of their labor value or where they minister to class distinction. The older monogamy was tolerant of other forms. It flourished side by side with them and it is likely that even where they existed, the majority of the people have lived in the monogamian relation. It has always been favored by "the healthiest social sentiment," and in the interest of property and social solidarity, the demand for the pair-form has became imperative. With progress has come the newer monogamy, which has become intolerant of other forms and has practically excluded them from modern society. These archaic forms exist in society to-day only as clandestine relations.

What, now, has been the influence of these forms upon divorce? It is perfectly clear that in primitive monogamy, in which marriage and divorce both originate, and where the relations exhibit all degrees of duration, that divorce is quite as free as marriage and is obtained by either party or by mutual consent. This is the natural result where marriage and divorce are purely individualistic. The rise of polyandry and polygyny naturally introduce restrictions on the part of the man or the woman in respect to the right of divorce. Polyandry is an expression of the theory of the mother-right family. Interpreting Kautsky, Howard says: "Gynocracy and with it polyandry, which is its result, is the highest stage in the evolution of hetairistic mother-

right; just as polygyny and the patriarchal family are the highest stage in the evolution of the father-right." [1]

It is easy, therefore, to see the bearing of these forms and the accompanying ideas upon both the right and the frequency of divorce.

Prof. Sumner says:

> In the mother-family, the woman could dismiss her husband. This she could also do in all the transition forms in which the husband went to live with the wife at her childhood home. In the father-family, the wife, obtained by capture or purchase, belonged to her husband on the analogy of property. The husband could reject or throw away the property if he saw fit. It is clear that the physical facts attendant on the two customs—one that the man went to live with his wife, the other that he took her to his home—made a great difference in the status of the woman. In the latter case she fell into dependence and subjection to the dominion of her husband. She could not divorce him." [2]

The implication is clear that in polyandry the right to divorce rested chiefly with the wife, and in polygyny it was as certainly the dominant right of the husband. This would probably be the case, even where these forms had given place to the single-pairing family, but where old customs still persisted. Where the man would not avail himself of the privilege of a plurality of wives, he would, nevertheless, be bound by the customs regulating the family and the wife likewise.

It is, however, with monogamy, as an institution, that we have chiefly to deal. Monogamy has been the prevailing type of human marital relations from the dawn of history.

[1] *Op. cit.*, vol. i, pp. 57-8.

[2] *Folkways*, pp. 377-8.

Struggling for self-assertion, it has everywhere gained the ascendency, and is to-day the only form which meets universal, ethical sanction, among the civilized nations of the earth. For social and political reasons, monogamy has often existed where other tendencies would have produced different forms. Where the prevailing notions in respect to the rights of husband and wife have been similar to those under polyandrian and polygynic forms, sometimes the wife, sometimes the husband, has had the exclusive right. The advantage, however, has been dominantly on the side of the man. But monogamy is essentially free and individualistic, and wherever it has existed, tendencies have been at work to accomplish an equalization of privileges, and the right of divorce has tended to become mutual. Various conditions have operated to keep the controling power in the hands of men, but the struggle of women to become free has marked the whole course of the monogamic institution of marriage. With the gradual emancipation of women and the attainment of greater equality, the right of women to divorce, on the same footing as men, must be conceded. As various coercive tendencies are removed and marriage becomes a matter of choice, equally free divorce will necessarily result. It thus appears that modern developments are bringing us to the completion of the circle. As in the primitive marriage, the individual will remain free to enter or to leave the marriage state, but he will be guided in his choices by higher considerations, and because of other influences, the union will be of a much more enduring character, and will tend to become permanent.

CHAPTER III

Ancient Codes

From the earliest times, marriage and divorce have been considered subjects for social regulation by people of all degrees of culture. In all the higher stages of civilization the ideal of marriage has come to be that of a life-long union of the husband and wife. For many reasons this ideal has never been wholly realized in actual experience. The relations entered into at marriage frequently cease. In order to determine the rights of property, to provide for offspring, and to define the status of the separated parties, society has been under the necessity of enacting rules and regulations. This has been the chief function of law in reference to divorce. A cursory review of a few of the ancient codes will be instructive. It will reveal the attitude of ancient historic societies in reference to the subject, and their method of dealing with it. Our chief object in presenting this survey of ancient legislation is to strengthen the position taken in reference to the secular nature of marriage and divorce. In the digest of the codes herein presented, we shall see how freely society has dealt with the subject. If in any instances regulations are modified by religious influences, it is in the same sense that economic and social institutions generally are so modified.

THE CODE OF HAMMURABI

The ancient code of Hammurabi, King of Babylon about 2250 B. C., discovered by M. de Morgan at Susa in 1901,

shows how, at this early date, the subject of divorce had come under minute regulation by the state. It was allowed upon the application of either husband or wife. A husband might put away his wife without stated cause:

> If a man set his face to put away a concubine who has borne him children, or a wife who has presented him with children, he shall return to that woman her dowry and shall give to her the income of field, garden, and goods and she shall bring up her children . . . and the man of her choice may marry her.[1]

Certain causes are stipulated, as barrenness, foolishness, neglect, and disease:

> If a man would put away his wife who has not born him children, he shall give her money to the amount of her marriage settlement, and he shall make good to her the dowry which she brought from her father's house and then he may put her away."[2] "If there were no marriage settlement, he shall give to her one mana of silver for a divorce."[3] "If he be a freeman, he shall give her one-third mana of silver."[4] "If the wife of a man who is living in his house, set her face to go out and play the part of a fool, neglect her house, belittle her husband, they shall call her to account; if her husband say, 'I have put her away,' he shall let her go. On her departure nothing shall be given to her for her divorce. If her husband say: 'I have not put her away,' her husband may take another woman. The first woman shall dwell in the house of her husband as a maid servant."[5] "If a man take a wife and she becomes afflicted with disease, and if he set his face to take another, he may. His wife who is

[1] *The Code of Hammurabi*, translated by Harper, § 137.
[2] *Ibid.*, § 138.
[3] *Ibid.*, § 139.
[4] *Ibid.*, § 140.
[5] *Ibid.*, § 141.

afflicted with disease, he shall not put away. She shall remain in the house which he has built and he shall maintain her as long as she lives."[1] "If that woman do not elect to remain in her husband's house, he shall make good to her the dowry which she brought from her father's house and she may go."[2]

Adultery does not seem to be a cause for divorce:

If the wife of a man be taken in lying with another man, they shall bind them and throw them into the water. If the husband of the woman would save his life . . . [he may].[3]

The wife does not "put away" or divorce her husband, but she may leave him at her discretion and demand her dowry. Patriarchal rights are modified to that extent.

If a woman hate her husband, and say: "Thou shalt not have me," they shall inquire into her antecedents for her defects; and if she have been a careful mistress and be without reproach and her husband have been going about and greatly belittling her, that woman has no blame. She shall receive her dowry and shall go to her father's house."[4] "If she have not been a careful mistress, have gadded about, have neglected her house and have belittled her husband, they shall throw that woman into the water."[5]

THE LAWS OF MANU

These ancient laws of India, of uncertain date, probably about the beginning of the Christian era, contain many regulations in respect to women and marriage. Women are under the complete tutelage of men.

[1] *Op. cit.*, § 148.
[2] *Ibid.*, § 149.
[3] *Ibid.*, § 129.
[4] *Ibid.*, § 142.
[5] *Ibid.*, § 143.

In childhood a female must be subject to her father, in youth to her husband, when her lord is dead to her sons; a woman must never be independent.[1]

Divorce is denied her.

She must not seek to separate herself from her father, husband, or sons; by leaving them she would make both [her own and her husband's] families contemptible.[2] She must always be cheerful, clever in [the management of her] household affairs, careful in cleaning her utensils, and economical in expenditure.[3] Him to whom her father may give her, or her brother with the father's permission, she shall obey as long as he lives, and when he is dead, she must not insult [his memory].[4]

The wife has no redress for her wrongs.

She who shows disrespect to [a husband] who is addicted to [some evil] passion, is a drunkard, or diseased, shall be deserted for three months [and be] deprived of her ornaments and furniture.[5]

She is to be treated with kindness but not for her own sake.

Women must be honored and adorned by their fathers, brothers, husbands and brothers-in-law, who desire [their own] welfare.[6] Where women are honored, there the gods are pleased; but where they are not honored, no sacred rite yields reward.[7]

Mutual fidelity is encouraged.

[1] Müller, *Sacred Books of the East*, vol. xxv (Translation by Bühler), ch. v, no. 148.

[2] *Ibid.*, ch. v, no. 149.

[3] *Ibid.*, ch. v, no. 150.

[4] *Ibid.*, ch. v, no. 151.

[5] *Ibid.*, ch. v, no. 78.

[6] *Ibid.*, ch. iii, no. 55.

[7] *Ibid.*, ch. iii, no. 56.

Let mutual fidelity continue until death; this may be considered as the summary of the highest law for husband and wife.[1]

The husband, however, has privileges not accorded to the wife. Marriage may be annulled.

Though [a man] may have accepted a damsel in due form, he may abandon [her if she be] blemished, diseased, or deflowered, and [if she have been] given with fraud.[2]

His duty to a faithful wife is prescribed.

The husband receives his wife from the gods, [he does not wed her] according to his own will; doing what is agreeable to the gods, he must always support her [while she is] faithful.[3]

There are conditions on which, however, he may desert or supersede her.

For one year let a husband bear with a wife who hates him; but after [the lapse of] a year let him deprive her of her property and cease to cohabit with her.[4] She who drinks spirituous liquor, is of bad conduct, rebellious, diseased, mischievous, or wasteful, may at any time be superseded [by another wife].[5] A barren wife may be superseded in the eighth year, she whose children [all] die in the tenth, she who bears only daughters in the eleventh, but she who is quarrelsome without delay.[6]

The husband's right is restricted under certain conditions.

But she who shows aversion to a mad or outcast [husband],

[1] Müller, *op. cit.*, ch. ix, no. 104.
[2] *Ibid.*, ch ix, no. 72.
[3] *Ibid.*, ch. ix, no. 95.
[4] *Ibid.*, ch. ix, no. 77.
[5] *Ibid.*, ch. ix, no. 80.
[6] *Ibid.*, ch. ix, no. 81.

a eunuch, one destitute of manly strength, or one afflicted with such diseases as punish crimes, shall neither be cast off nor be deprived of her property.[1] But a sick wife who is kind [to her husband] and virtuous in her conduct, may be superseded [only] with her own consent and must never de disgraced.[2]

While the patriarchal right is almost absolute, we find the limitation growing up in the wife's favor, which, while it does not afford her the privilege of divorce, begins by restricting the husband's rights in her favor. With the probable exception of the annulment of marriage, the divorce does not seem to be absolute and where the wife is superseded it is probably not more than divorce "a mensa et thoro."[3] "Neither by sale nor by repudiation is a wife released from her husband; such we know the law to be, which the Lord of creatures [Pragapati] made of old."[4]

THE JEWISH LAW

Jewish family life was organized upon the basis of the patriarchal system. The right of the husband to put away his wife was freely conceded in Jewish divorce law. The position of authority accorded the patriarch in tribal society generally, was strengthened among the Hebrews by the traditions concerning creation and of the introduction of evil:

And the man said, This is now bone of my bones, and flesh of my flesh: she shall be called Woman, because she was taken out of Man. Therefore shall a man leave his father and his mother, and shall cleave unto his wife: and they shall be one flesh.[5]

[1] Müller, *op. cit.*, ch. ix, no. 79.
[2] *Ibid.*, ch. ix, no. 82.
[3] *Ibid.*, ch. ix, no. 72.
[4] *Ibid.*, ch. ix, no. 46.
[5] Genesis 2:23-4.

As a penalty for her importunity, Eve is assigned to an inferior and dependent position:

Unto the woman he said, I will greatly multiply thy pain and thy conception; in pain thou shalt bring forth children; and thy desire shall be to thy husband, and he shall rule over thee.[1]

Upon the ground of this priority, absolute authority in the matter of divorce rested entirely within the right of the husband. He was not even required to assign the cause upon which his action was based; it was a personal matter:

When a man taketh a wife, and marrieth her, then it shall be, if she find no favor in his eyes, because he hath found some unseemly thing in her, that he shall write her a bill of divorcement, and give it in her hand, and send her out of his house. And when she is departed out of his house, she may go and be another man's wife.[2]

It would seem that the husband was the sole judge of what was "seemly." The divorce was absolute, and afforded the wife the privilege of remarriage. Josephus, speaking of the husbands's right, says:

He that desired to be divorced from his wife, for any cause whatsoever; and many such causes happen among men, let him in writing give assurance that he will never use her as his wife any more; for by this means she may be at liberty to marry another husband; although before this bill of divorce be given, she is not to be permitted to do so.[3]

He further gives two instances of the violation of the right of the husband, due probably to the influence of Roman

[1] Genesis 3: 16. [2] Deuteronomy 24: 1-2.

[3] *Antiquities of the Jews*, bk. iv, ch. viii.

customs prevalent at the time, which permitted women the free right to divorce their husbands. The first instance is the case of Herodias, who "took upon her to confound the laws of our country, and divorced herself from her husband, while he was alive, and was married to Herod her husband's brother."[1] The second case was that of Salome, the daughter of Herodias, who after quarreling with Costoborus, her husband,

> sent him a bill of divorce, and dissolved her marriage with him. Though this was not according to Jewish laws: for with us it is lawful for a husband to do so; but a wife, if she depart from her husband, cannot of herself be married to another, unless her former husband put her away. However, Salome chose to follow not the law of her country, but the law of her authority; and so renounced her wedlock.[2]

There were two limitations put upon the husband's right to divorce his wife at will, both based upon his own misconduct, which indicate the growing recognition of women's rights. His right to divorce his wife was denied, if he had maliciously and falsely accused his wife of ante-nuptial incontinence,[3] and in the event of his being compelled to marry a virgin whom he had raped.[4]

In the writings of the Mishna and the Talmud, the rights of husband and wife, together with the cause of divorce and the method of procedure, are clearly and elaborately set forth with much minuteness of detail.

THE TEACHING OF JESUS

Although not constituting in any sense a code, the teach-

[1] *Antiquities of the Jews*, bk. xiii, ch. v.

[2] *Ibid.*, bk. xv, ch. vii.

[3] Deuteronomy 22: 13-19.

[4] *Ibid.*, 22: 28-9.

ings of Jesus have been so fundamental in shaping the ideas and ideals of the church throughout the course of modern history that we feel justified in including them in this survey.

Marriage, as Jesus viewed it, finds its origin neither in the sanctions of religion nor in Jewish law, but in the basic fact of sex, and constitutes an organic rather than a formal relation.

> Have ye not read, that he who made them from the beginning made them male and female, and said, For this cause shall a man leave his father and mother, and shall cleave to his wife; and the two shall become one flesh? So that they are no more two, but one flesh. What therefore God hath joined together, let not man put asunder.[1]

His attitude toward divorce, however, seems to have been influenced profoundly by the condition of the social life of his age. Powerful influences were working the disintegration of the family. Jewish divorce scandals were agitating the minds of the people. The teachers of the law were divided in their opinions. John the Baptist had been beheaded for speaking his mind freely on the subject. "For Herod had laid hold on John, and bound him, and put him in prison for the sake of Herodias, his brother Philip's wife. For John said unto him, It is not lawful for thee to have her . . . and he sent and beheaded John in the prison."[2] Moreover, in Rome the tide of domestic disorder was beyond the control of the law. Clear and strong against this gloomy background, Jesus cast up the glowing picture of the ideal family. Marriage is indissoluble except for the cause of adultery. "Whosoever shall put away his

[1] Mat. 19: 4-6. [2] Mat. 14: 3-10.

wife, except for fornication, and shall marry another, committeth adultery: and he that marrieth her when she is put away committeth adultery."[1] For those who urged that his attitude was more uncompromising than that of Moses, he was ready with the reply: "Moses for your hardness of heart suffered you to put away your wives: but from the beginning it hath not been so."[2]

Jesus in his recorded teachings did not advance beyond the Jewish idea that divorce was the prerogative of the husband. This is probably due to the fact that his utterances on this subject are in answer to the question, "Is it right for a man to put away his wife for every cause?" No one thought in that day of putting the question the other way, since men only had the right of divorce under the Jewish law. On the subject of the woman's right to divorce he does not speak.

Jesus did not commit himself to any program of political or social policy, nor does it appear in the scattering and fragmentary utterances on divorce, that he intended to present any absolute scheme of domestic relations. His ideal is clear, and toward it has been the whole trend of social evolution.

In response to the question, whether the teachings of Jesus constitutes an absolute maxim of Christian morals from which there can be no possible deviation, Newman Smyth says:

Our answer will depend very much on two considerations. The first will be our general habit of reading the New Testament as another law, or of interpreting its precepts to the best of our understanding in what we may judge to

[1] Mat. 19:9, *cf.* also Mark 10:11-12, Luke 16:18.

[2] Mat. 19:8.

have been the spirit in which they were spoken, remembering the Master's own saying that his words are spirit and they are life. The other consideration will be our confidence in the correctness of the premise that the special sin alleged, by which the marriage union has been violated, is the full moral equivalent of adultery.[1]

In this connection it is interesting to note a statement of Dorner, that where love, "the first requisite in marriage, no longer exists . . . the only part of marriage that remains is the physical side; but a *cohabitatio* that is merely physical, and from which all love and affection have disappeared, is simply fornication."[2]

EARLY ROMAN LAW

The influence of Roman law in general upon western civilization makes it highly desirable that a brief statement of the nature of divorce in early Roman times should be included in this chapter. While no complete Roman law code has come down to us, there are fragments sufficient to show the general trend in the early period.

From the time of Romulus, divorce seems to have been regulated by law. "The Law of Romulus permitted the husband to repudiate his wife for three causes—adultery, preparing poisons, and the falsification of keys."[3]

Here, as everywhere, divorce conformed to the nature of marriage. Beginning in the regal period and lasting well toward the end of the republic, *manus* marriage prevailed. The wife passed from her *paterfamilias* under the complete control of her husband. Three forms of the

[1] *Christian Ethics*, pp. 413-14.

[2] *System of Christian Ethics*, pp. 544-5.

[3] Colquhoun, *A Summary of the Roman Civil Law*, vol. i, p. 527.

manus marriage were recognized: the patrician or religious marriage of *confarreatio* celebrated by the priests in the presence of witnesses, and the two forms of civil marriage, the one by *coëmptio,* a kind of fictitious sale in which the right of *manus* was immediately operative, and the other, the *usus* marriage, a form of common-law marriage in which the wife passed into *manus* if she remained in the home of her husband for a year without absence for three consecutive nights.

The marriage of *confarreatio* could be dissolved only by the ceremony of *diffareatio.*

The co-operation of the pontiffs was as essential to the counter-sacrifice of *diffareatio* as it was to the original sacrifice of *confarreatio.* This would seem to be the explanation of the fact that a marriage of *confarreatio* could not be dissolved at will, for the pontiff might decline to co-operate where there was no ground which the *jus sacrum* recognized as sufficient to justify a divorce.[1]

Coëmptio and *usus* marriages were dissolved by the ceremony of *remancipatio,* a fictitious sale in order to release the wife from the *manus* of her husband.

In these forms of marriage the right of divorce was the one-sided right of the husband. The wife had no power either to institute or to prevent divorce. The husband's legal authority was supreme. Concerning the law of the Twelve Tables, Colquhoun says:

We are not aware what were the valid grounds of divorce by the law of the Twelve Tables. That the reciprocal right of repudiation is certain; that the restrictions of Romulus were enlarged admits of just as little doubt; and it may be in-

[1] Sohm, *The Institutes of Roman Law,* p. 494.

ferred that any divorce, or at least repudiation, insisted upon for causes other than those mentioned, was visited by the fine to which Spurius Carvillius Ruga was exposed, namely, the forfeiture of half his property to Ceres, and of the other half to the woman; at any rate, the censors and the public opinion appear to have exercised a wholesome restraining influence, tending to check liberty and temerity.[1]

By the end of the Republic, *manus* marriage had been superseded by free marriage.

By this form, marriage became a simple private agreement . . . . while divorce became a formless private transaction to which the woman was as freely entitled as was the man. No intervention of court or magistrate was essential. . . To this liberty there was but one exception, the freed woman might not repudiate her patron, her former master, who had taken her in marriage. In all other cases the divorce, however arbitrary or unjust, was legally effective. There was no action for the restitution of conjugal rights; though the responsible party might in certain cases suffer pecuniary damage.[2]

Of this freedom Prof. Munroe Smith says:

Until some modern statute-maker shall allow the husband to repudiate the wife at his own good pleasure without judicial proceedings, on the sole condition that, if the repudiation be on other than certain legally specified grounds, he surrender all the property which she may have brought with her and make over to her any property which he may have settled on her for the event of widowhood—until that time the Roman divorce legislation, even in its most restricted phases, will hold the record of latitude.[3]

[1] Colquhoun, *op. cit.*, vol. i, pp. 528-9.

[2] Howard, *Hist. of Mat. Inst.*, vol. ii, pp. 15-16.

[3] *Political Science Quarterly*, 1905, vol. xx, p. 318.

The following summary of divorce in the Code of Justinian is given by Colquhoun:

Mutual consent would not effect a divorce *bona gratia*, although it was allowed for impotency. If it was to be effected *mala gratia*, or by one party, the legal grounds were sufficient without the interfence of the clergy, and these grounds may have consisted in a certain incompetency, or in the delict of one party called *divortium ob indignationem*. Six of these grounds were in favor of the man as against the woman: for conspiracy against the state without his knowledge, which Justinian terms the most damnable of crimes; for adultery; for attempting her husband's life, or even not protecting him from danger; for absenting herself covertly from the house; for attending public spectacles without his permission; for holding assignations with men or bathing with them for licentious purposes. In like manner five applied in favor of the woman as against the man: For conspiracy against the state, or concealment of conspiracy; for attempting her life, or omitting to protect her against the attempts of others; for attempting to prostitute her to others; for falsely accusing her of adultery; for not quitting the intimacy of other women after two warnings.[1]

THE BREHON LAWS

The Ancient Laws of Ireland are "a collection of rules which have gradually been developed in a way highly favorable to the preservation of archaic peculiarities."[2] According to Ginnell, they are:

A great collection, not of statutes, proclamations, or commands of any sort, but of laws already known and observed from time immemorial; . . . They explain that the men of Erinn having considered the matter in times past decided

[1] Colquhoun, *op. cit.*, vol. i, p. 533.

[2] Maine, *Early History of Institutions*, p. 11.

that it was best it should be so, and that nobles, chiefs, and tribes have loyally observed these laws.[1]

In the preface to the Senchus Mor or Grand Old Law, the claim is made that the book was compiled under the direction of St. Patrick. In the *Annals of the Four Masters,* the date of the work is indicated as follows: "The age of Christ 438. The tenth year of Laeghaire. The Senchus Mor and Feineachus of Ireland were purified and written."[2] While Maine discredits this early origin, placing the date of compilation as late as the tenth or eleventh century, he admits, "It is far from impossible that the writing of the Ancient Irish Laws began soon after the christianization of Ireland."[3] On account of the inaccessibility of a translation of these laws the summary of Ginnell in reference to divorce must suffice for our study.

Under the clan system one would expect to find the marriage laws very important and clearly laid down; yet notwithstanding the domestic familiarity of the laws, the information given on the marriage relation is surprisingly scanty, and of a disappointing character too. The ancient Celtic family was not constructed like the modern Christian family, and it retained its form some time after the people had become Christian. What precisely that form was, and what the principle of construction being matters involved in our lack of knowledge of the clan system, are now subjects of more or less wild conjecture. . . .

So far as the laws show, the marriage relation was extremely loose, and divorce was as easy, and could be obtained on as slight grounds, as is now the case in some of the states

[1] *Brehon Laws,* pp. 26-7.

[2] *Ibid.,* p. 29.

[3] Maine, *op. cit.,* p. 13.

in the American Union. It appears to have been obtained more easily by the wife than by the husband. When obtained on her petition, she took away with her all the property she had brought her husband, all her husband had settled upon her on their marriage, and in addition so much of her husband's property as her industry appeared to have entitled her to. This latter would be little or nothing if she had been an idle woman, a considerable amount if she had been a good housewife and producer of wealth. . . . The law seems to contemplate a woman being divorced from her husband and marrying him again, and even doing this more than once. Possibly *divorce* is a redundant translation, that the marriage was not considered completely dissolved, and that *separation* would be more nearly correct.

According to these laws a man might purchase a wife; from which it would follow that what a man might buy he might also sell. . . . .

Apparently the law on marriage and the dissolution of marriage was wholly pagan, and never underwent any modification in Christian times; perhaps because it was little resorted to except by the wealthy, and they had sufficient influence to keep it unaltered.[1]

ANCIENT LAWS AND INSTITUTES OF WALES

The Welsh laws resemble the Anglo-Saxon in being, not the complete codification of existing laws, but the record of laws collected imperfectly or enacted at given dates. There is also a scarcity of material in regard to marriage and divorce. Patriarchial ideas predominate and the husband's right to put away his wife for any cause seems to be assumed. The husband is accounted the owner of his lawful wife,[2] and since he is proprietary lord over her, it

[1] *Brehon Laws*, pp. 211-14.

[2] *Welsh Laws*, bk. xiv, ch. xxvi, no. 14.

is not right to take away this prerogative from him.[1] The laws, therefore, deal chiefly with the apparently growing rights of the wife. In the triads relating to exemption, the right of either party to separate from the other on the ground of adultery is assumed.

The three exclusives of a man when he shall separate from his wife: his horse, with the whole of his arms; the tunc of his land, to enable him to join the army, which he is not to share with anyone; the third is, his wyneb-werth, [fine payable for insult] which comes to him, on account of her permitting another to be connected with her: she is not to have a share of these when they separate.

The three exclusives of a woman, when she shall separate from her husband, the three primaries: her cowyll [morning gift]; her wyneb-werth, on account of her husband's being connected with another woman, to her dishonor; and her saraad [fine for insult], if her husband beat her, and she innocent: and this is a wrong punishment, by law.[2]

Further information as to the wife's rights in case of the husband's adultery is supplied.

Three times a woman has her wyneb-werth, to wit, when she shall get the three primaries: the wyneb-werth of every one is his saraad, without augmentation: her wyneb-werth the first time she shall find a woman with her husband, is six score pence from her husband; the second time, a pound; the third [time], she can separate from him, if she will.[3]

The Venedotian Code adds further:

And, if she endure, without separation, after the third offence, she is not entitled to any satisfaction.[4]

[1] *Welsh Laws*, b. 13, ch. 2, no. 244.
[2] *Ibid.*, bk. xiv, ch. 3, nos. 19-20.
[3] *Ibid.*, bk. xiv, ch. 3, no. 25.
[4] *Ibid.*, bk. iv, ch. 1, no. 39.

The right of the wife to divorce extends to other causes beside adultery.

If an alltud [a foreigner], having a wife with agweddi [dower], seek to part from his lord, and she willeth that her argyvreu [paraphernalia] should not be shared; some say, that she is to separate from her husband, and to go, with what belongs to her, free and secure: the law, however, says, that she is not to separate from her husband, but for an unlawful act done by him, and that it is not unlawful for him to give his lord his due; and on that account, let what is in their possession be equally shared.[1]

The Venedotian Code allows the wife still greater liberty:

Should her husband be leprous or have fetid breath or be incapable of marital duties, if on account of one of these three things she leaves her husband, she is to have the whole of her property.[2]

Certain limits prohibit hasty action in divorce.

The three holds of a wife: when first slept with, she is not to go from thence until the end of the ninth night to become accustomed to her husband; and when she shall separate from her husband, she is not to move from the house until the end of the ninth day, and then after all her property.[3]

The Gwentian and Venedotian Codes are much more strict:

If a man take a wife, by gift of kindred, and leave her before the end of seven years; let him pay her agweddi [dower] to her. If she be left after the end of seven years, let there be an equal sharing between them; unless the privilege of the husband entitle him to more.[4] If they separate before the seventh

[1] *Welsh Laws*, bk. v, ch. 2, no. 79.

[2] *Ibid.*, bk. ii, ch. 1, no. 10.

[3] *Ibid.*, bk. 14, ch. iii, no. 26.

[4] *Gwentian Code*, bk. 2, ch. 29, nos. 5 and 12.

year, let there be paid to her agweddi, her "argyvreu," and her "cowyll"; and if she was given when a maid, whatever of those things remain she shall have: and if she leave her husband before the seventh year, she loses all these, except her cowyll, and her wyneb-werth for his "gowyn" [concupiscence].[1] The nine days' restriction is also attached. According to the Venedotian code, divorce is not absolute until one or the other parties remarry. If a man willeth to separate from his wife, and after he shall have separated, willeth another wife; the first, that has been divorced, is free: for no man is to have two wives.[2] If a man part from his wife, and she be minded to take another husband, and the first husband should repent having parted from his wife, and overtake her with one foot in the bed and the other outside the bed, the prior husband is to have the woman.[3]

ANGLO-SAXON LAW

The laws enacted under the Anglo-Saxon kings from Aethelberht to Cnut contain few references to marriage and divorce. This is due in part to the fact that these are the records of new legislation rather than comprehensive codes of existing law. Divorce is referred to as an institution, but the nature of the institution is nowhere defined. The respect which women enjoyed among German peoples is apparent in the view of marriage expressed in the laws of king Cnut: "And let no one compel either woman or maiden to him whom she herself mislikes, nor for money sell her; unless he is willing to give anything voluntarily."[4] While divorce is mentioned in the following passage, nevertheless life-long monogamy is strongly urged.

[1] *Venedotian Code*, bk. 2, ch. 1, no. 9.

[2] *Ibid.*, bk. 2, ch. 1, no. 54.

[3] *Ibid.*, bk. 2, ch. 1, no. 18.

[4] No. 75.

And let it never be, that a Christian man marry within the relaionship of VI. persons, in his own kin, that is within the fourth degree; nor with the relict of him who was so near in worldly relationship; nor with the wife's relation, whom he before had had. Nor with any hallowed nun, nor with his godmother, nor with one divorced, let any Christian man ever marry; nor have more wives than one, but be with that one, as long as she may live; whosoever will rightly observe God's law, and secure his soul from the burning of Hell.[1] This is re-enacted in the Laws of King Cnut.[2]

Marriage assumes the form of a purchase, and is nullified if it is accompanied by fraud. "If a man buy a maiden with cattle, let the bargain stand, if it be without guile; but if there be guile, let him bring her home again, and let his property be restored to him."[3] Divorce seems to have been on the ground of mutual consent and without express reference to the cause, and to have been granted quite as readily upon the petition of the wife as upon that of the husband. "If she wish to go away with her children, let her have half the property." "If the husband wish to have them, [let her portion be] as one child." "If she bear no child, let her parental kindred have the 'fioh' [her inherited property] and the 'morgen-gyfe' [morning gift]."[4]

Adultery on the part of the husband is punishable by fine or other loss, but it does not seem to be cause for divorce.

If anyone commit adultery, let him make "bot" [fine] for

[1] *The Laws of King Ethelred*, ch. vi, no. 12.

[2] No. 7.

[3] *The Laws of King Aethelbirht*, no. 77.

[4] *Ibid.*, nos. 79-81.

it as the deed may be. It is a wicked adultery when a married man lies with a single woman, and much worse, with another's wife, or with one in holy orders.[1] If a married man be with his own maid-servant, let him forfeit her, and make "bot" for himself to God and to men: and he who has a lawful wife, and also a concubine, let no priest administer to him any of those rites which ought to be administered to a Christian man; ere he desist, and so deeply make "bot" as the bishop may teach him; and let him ever desist from the like.[2]

With the wife the penalty is much more severe and seems to imply cause for divorce in addition to mutilation, loss of property, and disgrace. "If, during her husband's life, a woman lie with another man, and it become public, let her afterwards be for a worldly shame as regards herself, and let her lawful husband have all that she possessed; and let her then forfeit both nose and ears: and if it be a prosecution, and the 'lad' [compurgation] fail, let the bishop use his power, and doom severely."[3]

[1] *The Laws of King Cnut*, no. 51.

[2] *Ibid.*, no. 55.

[3] *Ibid.*, no. 54.

CHAPTER IV

Divorce in Modern Times

CHARACTER OF MARRIAGE AND ITS EFFECT ON DIVORCE

The more modern aspects of divorce rest primarily upon the various conceptions of marriage. In its "natural history" stage, marriage, as we have seen, was a transient, easily-dissoluble relation, founded upon mutual consent. With the rise of private property came the evolution of ceremony to establish legitimacy, inheritance and civil rights. The ancient codes reveal a state of society, highly developed, in which marriage has passed under the dominion of public control. Moreover, through all the changes effected by early conditions, marriage remains a social institution, and as such the right of divorce is restricted only by social custom and law.

The next stage is entered upon with the rise of religious domination. As marriage among primitive peoples comes to be classed with events of importance, it is natural that it should be accompanied by religious ceremony. This is nothing more, at first, than the invoking of the blessing of the deities upon the newly-wedded pair, in the effort to secure immunity from evil spirits. In primitive society clear discrimination in respect to law is not made between the civil and the religious. Government is theocratic. It is not astonishing, therefore, that we find these two conceptions of marriage, both as a civil and as a religious act, growing up together as the institution of marriage becomes more permanent and clearly defined.

Advancing to the period of our most ancient civilizations we find that marriage, though a purely social institution, was quite generally associated with religious forms or was celebrated at religious altars. "Among the Hebrews marriage was not a religious contract, and there is no trace of a priestly consecration of it either in the Scriptures or in the Talmud, yet according to Ewald, it may be taken for granted that a consecration took place on the day of the betrothal or wedding, though the particulars have not been preserved in any ancient description." [1] Luckock, in the *History of Marriage,* speaks of "nuptial benedictions," and says,

> though the Talmud had preserved the obligation for such religious ceremonies in these days of laxity they set no store by the presence of a rabbi or priest, but suffered the bridegroom himself or any of the laity present to repeat the form. It was scarcely to be expected that a contract signed and sealed by no higher witness would be regarded a more sacred obligation than those which were made in the ordinary business or civil life.[2]

Buddhists regard marriage as a "concession to human frailty," and consider it a civil contract, nevertheless it is usually celebrated with religious ceremony and with the assistance of a lama. The ancient Hindus invoked the help of the gods at their weddings. Among Mohammedans marriage is a civil contract, but is concluded with a prayer to Allah.[3]

The most significant effect of religious ideas for our investigation is to be found in the various conceptions of marriage which have prevailed at different times in the

[1] Westermarck, *Human Marriage,* p. 425.

[2] Pp. 40-41.

[3] Westermarck, *op. cit.,* passim.

teachings of the Christian Church. Jesus instituted no marriage rites, but his teaching, and that of his disciples, as to its divine sanctity, has been of the utmost consequence in the ecclesiastical developments of subsequent centuries. The evolution of ecclesiastical control and the dogma of sacramental marriage have played such a large part in the history of marriage and divorce during the last few centuries, that an adequate comprehension of modern phenomena cannot be had without a slight acquaintance, at least, with the processes which have been so influential in giving direction and character both to the ecclesiastical and secular legislation and to the moulding of public sentiment into its present form.

RISE OF THE SACRAMENTAL IDEA

The rise of ecclesiastical marriage is given with such complete detail by Professor Howard that we cannot do better than give a summary of his account.

> It is a noteworthy fact that the early church accepted and sanctioned the existing temporal forms of marriage. . . . The only innovation effected by the primitive church was of a purely religious character. . . . Hence from the first century onward, we find evidence of a priestly benediction usually in connection with the betrothal and probably with the nuptials. The stages by which marriage passed under complete ecclesiastical jurisdiction are as follows: (1) It seems probable then, that during the first three or four centuries Christian marriages were not as a rule celebrated in church. The betrothal or nuptial benediction was not essential to a valid marriage, however important it might have been regarded from a religious point of view. After the nuptials they attended the ordinary service and partook of the sacrament. (2) The introduction of the bride-mass constitutes the second stage in the history of clerical marriage. . . . Apparently the

function of the priest is purely religious. It is merely an invocation of the divine blessing upon the life of the newly wedded pair, and has no legal significance. The nuptials have already been solemnized. (3) But already in the tenth century we reach the beginning of a third stage in the rise of the ecclesiastical ceremony. The nuptials still constitute two distinct acts. The first is the *gifta* proper, according to the usual temporal forms. It is no longer a strictly private transaction, but it takes place before the church door—*ante ostium ecclesiae*—in the presence of the priest, who participates in the ceremony and closes it with his blessing. The second act consists in the entrance into the church and the celebration of the bride-mass, followed by a second benediction. (4) The next step was accomplished in the beginning of the thirteenth century. Marriage was usually celebrated by the priest and not merely in his presence; though the ceremony still takes place at the church door. Not until the thirteenth century, as a general rule, does the priest appear with authority as one especially qualified by his religious office to solemnize the nuptials.[1]

This stage Professor Sumner regards as the result "of the astounding movement [in the thirteenth century] by which the church remodeled all the ideals and institutions of the age and integrated all social interests into a system of which it made itself the centre and controling authority."[2] The final stage in the process of ecclesiastical domination in which the Canon law "supplanted and eliminated the secular jurisdiction, and alone regulated marriage in Christian Europe,"[3] awaited the complete development of the dogma of the sacrament of marriage.

[1] *Hist. of Mat. Institutions*, vol. i, p. 291, *et seq.*

[2] Folkways, p. 410.

[3] Esmein, *Le Mariage en Droit Canonique*, vol. i, p. 3.

Early Christian teaching concerning marriage sprung largely from asceticism. There is much probability that St. Paul's ideas in reference to women and marriage were greatly influenced by the sex-psychopathy of Plato.[1] The consensus of the church fathers is that woman is unclean, and marriage is a necessary evil, tolerated for the continuance of the race and the prevention of immorality. It is therefore "a compromise with lust from which the saint may well abstain."[2] Hieronymus said: "Marriage is always a vice; all we can do is to excuse and cleanse it."[3] Sacerdotal celibacy was the inevitable result. In turn, this voluntary sex-suppression produced a growing misogyny of which the middle ages witnessed the consequent evils. Ascetic contempt for women threatened the very foundations of the family.

But growing up simultaneously was the paradoxical doctrine of the divine sacrament of marriage. Based upon the teaching of Jesus and St. Paul, the doctrine of the "divine mystery" of marriage was developed by the church fathers Tertullian, Augustine and others. Although this view of marriage seems to have been overshadowed by ascetic teaching for many centuries, by the middle of the twelfth it had become a recognized dogma of the church, and in 1164 was incorporated in the list of the seven sacraments of the church in the *Sentences* of Peter Lombard and was reaffirmed in Florence in 1439.

Thus the effort of the church to gain complete control of marriage is supported by the dogma of its sacramental character, and the final stage is entered into. The Council

[1] Schroeder, "The Evolution of Marriage Ideals," *The Arena*, Dec., '05, p. 580.

[2] Howard, *op. cit.*, vol. i, p. 326.

[3] Bebel, *Die Frau und der Sozialismus*, p. 59.

of Trent, in 1563, re-declared marriage a sacrament of the church and placed the whole subject under ecclesiastical jurisdiction. Marriage was now no longer valid except through and in accordance with the rites of the church and when consecrated by her duly appointed administrators.

The effect of this dogma upon divorce is apparent. From the first the influence of the church was against the laxity of the Roman customs of divorce. At the beginning, the question rested upon the authority of the teachings of Jesus and St. Paul, and divorce was countenanced for adultery only. It was not long, however, until the question was one of inherent right. "It is truly in [the teaching of] St. Augustine that we see established for the first time a logical and necessary relation between the sacrament and indissolubility." [1] Strict views were far from being realized, however, in practical life, owing largely to the character of the peoples brought under the sway of Christianity.

For centuries the battle of the church was to conform her practices to her theories. This could be accomplished only by bringing the whole question of divorce under her complete control. By the middle of the tenth century the canon law had done its work, and through the instrumentality of Peter Lombard, divorce was brought into harmony with the sacramental theory of marriage and the control of the church was practically complete. Thus before the whole subject of matrimonial law was brought under ecclesiastical control the question of divorce was practically settled. This doctrine of indissolubility has remained the undisputed dogma of the Roman Church to the present time, divorce *a mensa et thoro* alone being allowed.

[1] Esmein, *op. cit.*, vol. i, p. 65.

DEVELOPMENT OF THE SOCIAL CONTRACT THEORY

Reaction against the sacramental theory of marriage and the control of the church was a consequence of the Protestant Reformation. For the purpose we have in view, we may omit any discussion of the causes which produced the Reformation and confine our discussion to the visible processes which have resulted in the modern ideas of marriage.

Luther's conception of women and marriage is determinative for Protestant thought. He did not share in the medieval misogyny, nor did he hold the sacramental view of marriage. He considered marriage pure, and the normal relation of the sexes. Natural impulses, he held, were divinely implanted, and their legitimate function a social duty. He denies that marriagee and the church have anything in common. "Marriage is to be regarded as an act of free will by those who participate in it. It does not concern the church. Therefore know, that marriage is an external thing, as any other worldly transaction." [1] In reference to the attitude of the reformers to the subject he says: "As to the manner now in which marriage and divorce should be regarded among us, I have said that it should be commended to the jurists and committed to worldly jurisdiction because marriage is only an earthly and external thing." [2] Yet so high was his estimate of the character of marriage that he refers to it as a sacrament, "An external holy symbol of the greatest, holiest, worthiest, noblest thing that has ever been or can be; the union of the divine and human nature in Christ." [3] Thus in attacking and modifying the law and the ascetic ideals of the medieval church, Luther paved the way for the abolition of

[1] Bebel, *Die Frau und der Sozialismus*, p. 78. [2] *Ibid.*

[3] Strampff, *Dr. Luther, Ueber die Ehe*, p. 205.

sacerdotal celibacy and for the establishing of the social-contract theory of marriage. Yet so firmly rooted were the old ideas that their eradication was the work of centuries.

Luther himself does not wholly escape the ascetic influence in respect to marriage, for while better reasons for marriage were assigned, the ascetic idea inheres, though given a subordinate place. His idea of marriage is expressed in a triad as follows: "1. The design of marriage is the begetting of children for the increasing of the race: in this lies the beginning and cause of life. 2. Further, the design of marriage is the bringing-up of children in the fear of God and to fit them to exercise ecclesiastical and worldly power. 3. Finally, marriage is offered by God as a remedy against sinful desire and lust."[1] It is apparent here that the loftier ideals of romantic affection associated with marriage in later times had not yet come to be appreciated by the great reformer.

Luther's opinion that all matrimonial affairs belong, not to the church, but to the jurist, was not accepted by the legislators of the Protestant countries. Marriage certainly ceased to be thought of as a sacrament, but continued to be regarded by the Protestants as a divine institution; hence sacerdotal nuptials remained as indispensable as ever.[2]

Professor Howard sums up the total influence of the Reformation in respect to marriage as follows:

Thus the changes effected by the religious revolution in the conception of marriage, highly important as it was from a speculative point of view, was not destined to bear its proper fruit until after many days. In Germany, after a time, the

[1] Strampff, *op. cit.*, p. 3.

[2] Westermarck, *Human Marriage*, p. 428.

bolder and more liberal teachings of Luther were generally ignored; so that by the middle of the seventeenth century the reactionary theories which had then gained ascendancy were substantially in harmony with the ideas of the English clergy. In both countries the ecclesiastical courts still continued to try matrimonial cases in the spirit of the canon law; and more and more, as the new churches grew in power and became conservative, did the theological view of the nature of marriage approach the ancient dogma. According to the canon law the church claimed matrimonial jurisdiction because marriage was a sacrament; by the Protestants, marriage was made almost a sacrament because the church exercised matrimonial jurisdiction. Not until the full triumph of civil marriage in the nineteenth century were the logical results of the new doctrines at last attained.[1]

Definite progress was made in the direction of civil marriage when the reformers directed their attacks not only against the character of marriage as a sacrament but against the ecclesiastical jurisdiction in matrimonial affairs on the ground that they were purely temporal matters. The position was strengthened by a large and growing party, especially in England, which favored the complete separation of church and state, as well as by the opponents of the Romanizing party in the established church. Thus in England where the council had not had great influence, events culminated in "Cromwell's Triumph," the civil marriage act of 1653.[2] From this event we may date the modern era of civil-contract marriage, although its complete recognition was not accomplished anywhere before the days of the French Revolution.

Three things were clearly established. (1) The sphere of

[1] *Hist. of Matrimonial Institutions,* vol. i, p. 399.

[2] *Ibid.,* vol. i, p. 408 *et seq.*

matrimonial jurisdiction was defined, (2) conditions of marriage and the form of ceremony were established, (3) the machinery of administration was determined. Jurisdiction was vested in civil tribunals and a civil ceremony was required in all cases of valid marriage. The ceremony established the doctrine of mutual consent and was performed by a justice of the peace after due publication of bans. The wording of the ceremony, however, was of a religious character. The whole subject of administration as regards controversies, lawfulness and unlawfulness, was placed in the hands of justices of the peace and local judges. This act, providing as it did for jurisdiction, registration, publication, and every civil function in reference to marriage, has been the model for legislation in all civilized countries for two centuries and a half.

While this civil-marriage act was not repealed it was rendered inoperative, almost at once, by the political changes that occurred and was not revived for exactly a century. The Hardwick act of 1753 imperfectly re-established civil marriages, and its defects were remedied in the act of 1856, which constitutes the present civil marriage laws of England.

Civil marriage in France is a product of the Revolution. "The Constitution of Sept. 3, 1791 declares in Article 7 [tit. II] 'The law considers marriage only as a civil contract. The legislative power will establish for all the inhabitants, without distinction, the mode by which births, marriages and deaths will be ascertained, and will designate the public officers to receive the records.'" [1]

In the United States, from Colonial days, the civil contract idea of marriage has prevailed. The nineteenth century has witnessed the establishment of the civil contract

[1] Glasson, *Le mariage civil et le divorce*, p. 253.

idea of marriage throughout practically the whole civilized world.

The influence of this transition upon divorce may now be stated in a few sentences. As the counterpart of marriage, divorce must always be governed by prevailing doctrines of marriage. With the repudiation of the sacramental idea of marriage, the decline of the doctrine of the indissolubility of marriage was inevitable, although religious conservatism caused divorce to lag far behind the general progress. The idea of the inherent sanctity of marriage, even after the idea of the sacrament was abandoned, had the effect greatly to retard the progress of liberal divorce customs and legislation. Even Luther, who more than any other shaped the thought of the Reformation in respect to divorce, was at the first influenced by his innate feeling as to the sacredness of marriage and was much more conservative than some of his contemporaries and successors.[1] Reactionary influences both on the Continent and in England gained the ascendency and the writings of the reformers such as Zwingli, Bucer and Bullinger and even the masterful arguments of John Milton were powerless to produce their legitimate results. The ancient theory of indissolubility was too firmly implanted. Even when marriage had become a civil contract, it did not become less binding. For more than two centuries the law of divorce, both ecclesiastical and civil, remained practically undisturbed. But the principal involved in the civil contract theory was destined to work out its necessary results. With the general recognition of the civil right throughout the civilized world, the sphere of secular legislation has been extended over the entire province of divorce, and ecclesiastical influence has dimin-

[1] Howard, *op. cit.*, vol. ii, p. 61.

ished to an impotent protest. While there is abundant evidence of the survival of traditional ideas in reference to the subject, divorce is now almost universally granted by civil courts upon the application of either party. We are thus nearing the completion of the cycle. Further progress will bring us back to the primitive practice of conceding the freest individual initiative in the whole realm of sexual choice and relations.

CHAPTER V

Statistics of Divorce

SOURCES

By an act of Congress approved March 3, 1887, the Commissioner of Labor was authorized "To collect and report to Congress the statistics of and relating to marriage and divorce in the several States and Territories and in the District of Columbia." [1] This report, prepared by Hon. Carroll D. Wright, Commissioner of Labor, covered a period of twenty years, 1867-1886, and was submitted to Congress in February, 1889.

A joint resolution of Congress, approved February 9, 1905, authorized the Director of the Census "To collect and publish the statistics of, and relating to, marriage and divorce in the several States and Territories and in the District of Columbia since January 1, 1887." [2] This report was made by the Director of the Census, Dr. S. N. D. North. The investigation was carried on under the direct supervision of the chief statistician of the Bureau, Mr. William C. Hunt, with the assistance of Hon. Carroll D. Wright,[3] who prepared the previous report. This second report was transmitted to Congress in two parts. Part two, containing the General Tables, was submitted October

[1] *Report of the Commissioner of Labor on Marriage and Divorce*, 1889, pp. 12-13.

[2] *Special Report of the Census Office on Marriage and Divorce*, 1908-9, pt. ii, p. ix.

[3] Deceased before the completion of the work.

15, 1908. Part one, containing Summary, Laws, and Foreign Statistics, was not completed until September, 1909. The Statistical Text and Summary Tables in chapter I, part I, were prepared by Mr. Lewis Meriam, acting chief of the division of revision and results, and were largely based upon a preliminary bulletin on "Marriage and Divorce,"[1] prepared by Dr. Joseph A. Hill, the chief of that division. Since the former report is now out of print, the present report embodies much of the material contained in the first, and is virtually a report for the period 1867-1906.

Marriage statistics in the first report were declared by Mr. Wright himself to be "thoroughly incomplete and unsatisfactory".[2] They were obtained for only 1,728 counties out of a total of 2,627. The present report has imperfect returns from only 164 counties out of a total of 2,803, exclusive of South Carolina, where no marriages are recorded, while for only 28 counties are returns entirely lacking.

By the simple method of deducting the incomplete figures of marriages in the 164 counties from the total marriages and the combined population of the 192 counties from the total population we have an accurate basis for computing rates.[3] These statistics were confined simply to the enumeration of the number of marriages celebrated and were compiled from the original data obtained in the counties.

Divorce statistics, in which we are especially interested, in both investigations, were obtained by a careful examination of the records in the counties granting divorces and are complete, except in the cases of those counties in which the records have been destroyed, either partially or totally,

[1] *Census Bulletin* 96.

[2] Report of 1889, p. 18.

[3] Report of 1908-9, pt. i, p. 8.

by fire or other cause. In the first report they were given for over 95 per cent of the whole number of counties, and these cover the facts for over 98 per cent of the whole population of the country, while for the second, they were lacking for only six counties and are incomplete for only a few others. "It is believed, however", the second report declares, "that in neither investigation were these omissions sufficiently serious to destroy the value of the figures for the United States or for any of the states or territories."[1]

We are now in possession of marriage and divorce statistics for Continental United States for a period of 20 years, 1887-1906, in the case of the former, and for a consecutive period of 40 years, 1867-1906, in the case of the latter.

Our study, except for the purpose of comparison, is confined to a survey of the statistics of divorce.

THE DIVORCE MOVEMENT

The important fact for the student of social science, is not the number of divorces recorded for any given year or for any particular state, but the movement which a comparative study reveals. It will be our aim in this chapter, therefore, not to present a detailed tabulation of divorce statistics, but to examine the changes that have taken place in order to determine the nature and rapidity of the movement in general, and of some of the variations in particular, that are exhibited by these changes in the period covered by the Federal reports.

The annual number of divorces granted in the United States from 1867 to 1906 shows an unbroken series of increases with but one exception. The figures are:[2]

[1] Pt. i, p. 11.

[2] Report of 1908-9, pt. i, p. 12.

Year.	Divorces.		Year.	Divorces.	
	Total number.	Increase over preceding year.		Total number.	Increase over preceding year.
1906.....	72,062	4,086	1886.....	25,535	2,063
1905.....	67,976	1,777	1885.....	23,472	478
1904.....	66,199	1,274	1884.....	22,994	*204
1903.....	64,925	3,445	1883.....	23,198	1,086
1902.....	61,480	496	1882.....	22,112	1,350
1901.....	60,984	5,233	1881.....	20,762	1,099
1900.....	55,751	4,314	1880.....	19,663	2,580
1899.....	51,437	3,588	1879.....	17,083	994
1898.....	47,849	3,150	1878.....	16,089	402
1897.....	44,699	1,762	1877.....	15,687	887
1896.....	42,937	2,550	1876.....	14,800	588
1895.....	40,387	2,819	1875.....	14,212	223
1894.....	37,568	100	1874.....	13,989	833
1893.....	37,468	889	1873.....	13,156	766
1892.....	36,579	1,039	1872.....	12,390	804
1891.....	35,540	2,079	1871.....	11,586	624
1890.....	33,461	1,726	1870.....	10,962	23
1889.....	31,735	3,066	1869.....	10,939	789
1888.....	28,669	750	1868.....	10,150	213
1887.....	27,919	2,384	1867.....	9,937	...

*Decrease.

That the actual number of divorces is increasing is clearly established by the figures presented. Whether they are relatively more frequent depends upon their ratio either to the population or to the marriage rate in the population. Assuming that we have a constant ratio expressed by a fixed number of divorces in any given unit of population, then any increase in the population will be followed by a corresponding increase in the total number of divorces without disturbing the rate. Or, again, assuming that there exists a fixed ratio between the marriage and the divorce rates within the population, then an increase in the rate of marriage will result in an increase in the rate of divorce without increasing its relative importance.

It will be necessary, therefore, to compare the increase of divorces with the growth of population and to compare the marriage and divorce rates in order to ascertain the real significance of the figures.

Since we do not have an annual enumeration of the population, it is necessary to compare the number of divorces with the population in the census years. By a special method of computation the Census Office has estimated the population for 1905 and obtained it for the quinquennial years by adding one-half of the decennial increase to the population enumerated at the preceding census. For the purpose of comparison, therefore, we may utilize a table based upon five-year periods which is sufficiently accurate to reveal the comparative increase:[1]

Year.	Divorces.			Population.			Population to one divorce.	Divorces per 100,000 population.
	Annual average.*	Increase.		Total.	Increase.			
		Number.	Per cent.		Number.	Per cent.		
1905....	67,791	12,289	22.1	†82,574,195	6,579,620	8.7	1,218	82
1900....	55,502	14,890	36.7	75,994,575	6,523,431	9.4	1,369	73
1895....	40,612	7,415	22.3	†69,471,144	6,523,430	10.4	1,711	58
1890....	33,197	8,573	34.8	‡62,947,714	6,395,966	11.3	1,896	53
1885....	24,624	5,481	28.6	†56,551,748	6,395,965	12.8	2,297	44
1880....	19,143	4,774	33.2	50,155,783	5,798,706	13.1	2,620	38
1875....	14,369	3,162	28.2	†44,357,077	5,798,706	15.0	3,087	32
1870....	11,207	.....	.....	38,558,371	.....	.....	3,441	29

* The average is that of the 5-year period of which the year given is the median year except that for 1905, which is the average of the 4 years 1903 to 1906, inclusive.

† Estimated.

‡ Includes population of Indian Territory and Indian reservations.

[1] *Census Bulletin* 96, p. 11.

From this table some interesting observations may be made. The population in 1905 was little more than double that of 1870 while divorces were six times as numerous. The average quinquennial increase in the population is 11.5 per cent while the increase of divorces averages 29.4 per cent. The contrast is made still clearer if we assume the rate of one divorce to 3,441 of the population, the rate prevailing in 1870, to be a fixed rate. In order then to account for a total of 67,791 divorces in the year 1905 the population must have increased to 233,268,831, while it was estimated at only 82,597,620. Or, had divorces been as frequent in 1870 as they were in 1905, *i. e.*, one for each 1,218 of the population, there would have been a total of 31,656, while our table shows but 11,207 for that year.

It is perfectly clear, therefore, that the rate of increase of divorce has been almost three times the rate of increase of the population. Furthermore, if we observe the movement throughout the period, it will be noted, that while population increased by the steady acquisition of a number clustering closely around an average of about six millions for each five-year period, divorces show a rapidly accelerated rate of increase in actual numbers which more than quadrupled in the period under consideration.

On the basis of the foregoing comparison of the increase of divorce with the increase of population we are able approximately to account for but a little more than one-third of the divorce increase. Other reasons must be sought if the divorce movement is to be explained.

A slightly more significant comparison than that based upon the total population is that based upon the married population, the group in which divorces occur. The Eleventh and Twelfth Census reports (1890 and 1900), give the conjugal condition of the population. For the purpose

of further comparison, the Census Office has estimated for the two preceding decades and presents a table as follows:[1]

Census Year.	Married population.	Divorces, annual average.*	Married population to one divorce.	Divorces per 100,000 married population.
1900.....	27,770,101	55,502	500	200
1890.....	†22,447,769	33,197	676	148
1880.....	‡17,908,092	19,143	935	107
1870.....	‡13,823,708	11,207	1,233	81

* For the 5-year period, of which the census year was the median year.

† Includes estimated married population of Indian Territory and of Indian reservations.

‡ Estimated.

The results obtained by this method are substantially the same. The married population a little more than doubled between 1870 and 1900 while divorces increased nearly five fold. In other words, there were almost two and a half times as many divorces per 100,000 of the married population in 1900 as in 1870. (Had this comparison been extended to 1905, the three-fold increase of divorces over the growth in the married population would have been maintained.) The ratio of the percentage of the married population to the total population remains relatively constant: 36.5 per cent in 1900, 35.7, in 1890; 35.7, in 1880, and 36.1, in 1870. A slight decrease from 1870 to 1880 is followed by an increase between 1890 and 1900. The married population for 1870 and 1880, it should be remembered, however, is only estimated.

[1] Report of 1908-9, pt. i, p. 13.

We turn next to the consideration of the relation between divorce and marriage rates. The recent report of the Census Office provides, for the first time, reliable data for the computation of marriage rates in the United States. Employing the same method for obtaining the relative frequency of marriages in respect to the total population as that used in reference to divorces, the following table is constructed for the period of 1887-1906:

Year.	Marriages.			Population.			Population to one marriage.	Marriages per 100,000 population.
	Annual average.*	Increase.		Total.	Increase.			
		Number.	Per cent.		Number.	Per cent.		
1905...	806,339	121,358	17.7	†82,574,195	6,579,620	8.7	102	978
1900...	684,981	88,999	14.9	75,994,575	6,523,431	9.4	111	901
1895...	595,984	47,203	8.6	†69,471,144	6,523,430	10.4	117	857
1890...	548,779			‡62,947,714			115	872

*The average is that for the five-year period, of which the year given is the median except that for 1905, which is the average of the four years 1903 to 1906, inclusive.

† Estimated.

‡ Includes population of Indian Territory and the Indian reservations.

From 1890 to 1905 the population increased 31.2 per cent while marriages made a gain of 46.9 per cent. Although the increase from 1890 to 1895 is abnormally low, as a result of the financial depression of 1893, in the year following which marriages actually fell off, the figures for 1900 and 1905 seem to be fairly normal. It is therefore apparent, both from the comparison of the extreme dates and from the general trend, after making all due allowance for the small increase of 1895, that the increase as a whole

is in excess of that of the population, the average increase for population being 9.5 per cent and for marriages 13.7 per cent.

Assuming that one marriage to every 115 of the population, the rate in 1890 is a fixed rate, it would have required a population of 92,728,985 in 1905 to have recorded 806,339 marriages. Or, if one marriage to every 102 of the total population, the frequency in 1905, had occurred in that year, there would have been a total of 617,134 as against 548,779 as given in the table.

Here, again, a more scientific marriage rate is obtained if marriages are compared with the adult unmarried population, the group in which marriages occur. The following table is constructed from the figures given in the census report:[1]

Year.	Unmarried population 15 years of age and over.	Marriages, annual average.*	Unmarried population 15 years of age and over to one marriage.	Marriages per 100,000 unmarried population 15 years of age and over.
	Uncorrected totals.			
1900.....	21,959,038	684,981	32	3,119
1890.....	18,073,009	548,779	33	3,036
	Exclusive of counties for which marriage returns are lacking or incomplete.			
1900.....	†21,261,642	682,640	31	3,211
1890.....	†17,029,598	538,891	32	3,164

*For the five-year period of which the census year was the median year.
†Estimated.

[1] Report of 1908-9, pt. i, p. 8.

The results obtained by this method serve merely to confirm the fact that marriages were slightly more numerous in the population in 1900 than in 1890. Before 1890 the rate can only be estimated. We quote from the report:

> It would be interesting to know how these marriage rates compare with those prevailing in earlier years, but material for satisfactory comparisons is not available. It has been computed, however, for the counties in which the marriage returns were ostensibly complete the average annual number of marriages per 10,000 population was 98 in 1870 and 91 in 1880. If these figures could be regarded as representative of the country as a whole they would show that the rate in 1900 was lower than in 1870, but higher than that in 1880 and 1890. The figures for the early years, however, represent only about one half the population, and therefore cannot be regarded as conclusive.[1]

It remains now to determine whether there is a constant ratio between the marriage and the divorce rates. By a comparison of the annual average of both marriages and divorces for the years for which they are both given in the previous tables, namely, for 1890 to 1905, and by calculating the marriages in 1870 and in 1880 on the basis of 98 and 91 respectively per thousand of the population, we are able to construct the following table:

[1] Report of 1908-9, pt. i, p. 8.

Year.	Marriages, Annual Average.*	Divorces, Annual Average.*	Marriages to one Divorce.	Divorces per 1,000 Marriages.
1905.....	806,339	67,791	11.9	85.3
1900.....	684,981	55,502	12.3	81.0
1895.....	595,982	40,612	14.6	68.1
1890.....	543,761	33,197	16.3	61.0
1885				
1880.....	†456,456	19,143	23.8	42.0
1875				
1870.....	‡377,888	11,207	33.7	29.6

*For the five-year period for which the year given was the median year.

† Computed on the basis of 91 marriages per 10,000 population in 1880.

‡ Computed on the basis of 98 marriages per 10,000 population in 1870.

The actual number of marriages reported for the years 1890, 1895, 1900 and 1905 vary but a little over five per cent—less than two per cent except in the year 1905—from the annual average for the five-year periods of which these years are the median years. Notwithstanding the fact that the figures for 1870 and 1880 are computed from insufficient data, it is scarcely probable that they vary much more than five per cent from the annual averages of these years, had we the data for computing them. Such a variation, or even a much larger one for these years, would not materially change the general facts which the figures reveal.

It is very clear, therefore, that the ratio of divorces to marriages is constantly increasing, and approximately at a three-fold rate. It would have required 2,508,267 marriages instead of only 806,339 in 1905 to have produced 67,791 divorces had the rate of one divorce to 337 marriages, the rate in 1870, obtained in that year.

It is now perfectly clear from any method employed to compare the divorce rate with the growth of the population or with the marriage rates, that the growing frequency of divorces is not thus to be accounted for. Not more than

one-third of the total number of divorces can be traced to these sources.

In the discussion thus far, however, we have merely displayed the general nature of the divorce movement. The rate of divorce we have been studying is that based upon the total number of divorces granted within the jurisdiction of continental United States. No account has been taken of the variations of the rate under pressure of local conditions. It is now necessary to examine some of the incidents of this general movement and to trace some of its variations from the norm.

VARIATIONS OF THE MOVEMENT

No effort is here made to exhibit in detail every variation from the general trend of the divorce movement. The chief features of a few of the more important variations will be presented for the purpose of obtaining a more comprehensive view of the divorce situation. This will enable us better to analyze the causes which underlie the movement as a whole, as well as to discover the chief reasons for the variations in particular.

Geographic Distribution

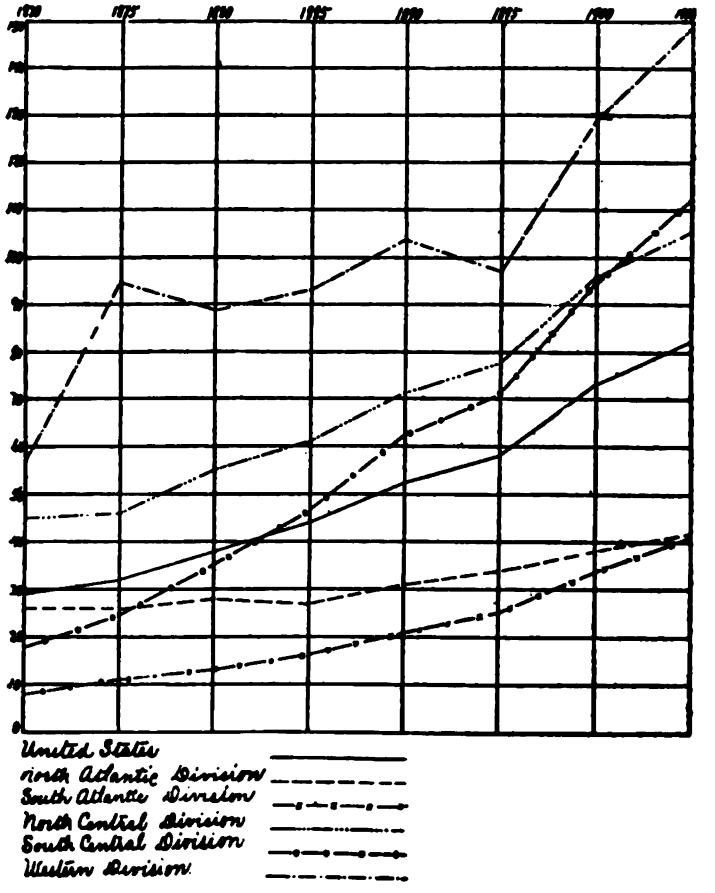
Wide differences exist in the divorce rate among the different geographic divisions and among the several states. Based upon the annual average divorce rate per 100,000 of the population in five-year periods from 1870 to 1905 we have the table following:

Geographic Divisions.	Divorces, annual average* per 100,000 population.							
	1905.	1900.	1895.	1890.	1885.	1880.	1875.	1870.
United States ...	82	73	58	53	44	38	32	29
N. Atlantic	42	38	34	31	27	28	26	26
S. Atlantic	41	33	25	21	16	13	11	8
N. Central	105	96	78	71	61	55	46	45
S. Central	112	95	71	62	46	35	24	18
Western	149	129	97	104	93	89	95	57

*For the five-year period of which the year stated is the median year, except that for 1905, which is the average of the four years, 1903–6, inclusive.

A glance at the table reveals the fact that there are not only great differences in the relative number of divorces in the different geographical divisions, but that also there are marked differences in the velocity with which the rate has increased. A graphic illustration will make both facts clear:

DIVORCES, ANNUAL AVERAGE* PER 100,000 POPULATION IN GEOGRAPHIC DIVISIONS.



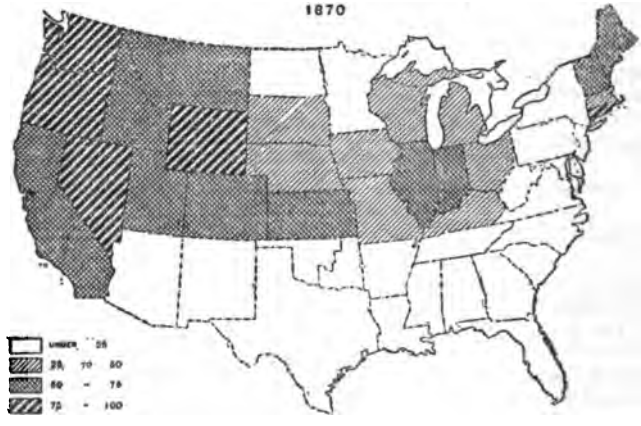
* For the five-year period of which the year stated is the median year, except that for 1905, which is the average for the four years, 1903-6.

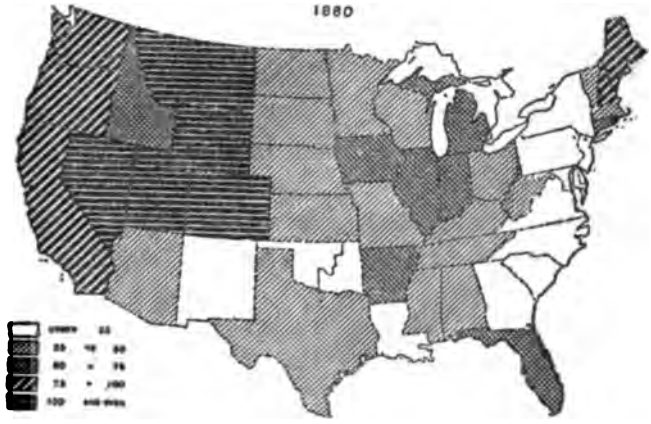
From an observation of the curves it appears that the slowest increase is in the North Atlantic division, while in the South Atlantic it is but a little faster. Although the rate in the Western division was much higher in the begin-

ning of the period, the velocity of the rate in the South Central division has slightly surpassed it, having moved from 18 to 112 per 100,000 population; the Western, from 57 to 149. The North Central division appears by comparison with the movement in the country as a whole to be the most normal group.

Variation Among States.

The divorce movement among the several states shows still wider variations than that among the geographic divisions. The series of maps prepared by the Census Department, and by courtesy of the Department herewith presented, shows in a most striking manner the changes that have taken place:




1880


1890


1900

The maps are shaded according to the average annual number of divorces per 100,000 population and show both the frequency and the increase by decades during the period 1870 to 1900. In the language of the report "Divorce is thus presented as a dark cloud gradually gathering over the country".[1] Except for New England, which presents a condition similar to that of the West, this cloud is gradually spreading from the north and west to the south and east.

City and County Rates

Wider variations still are to be found among the counties of the several states. For example, in Illinois, where the annual average of divorces was 100 per 100,000 population in 1900, the rate for the various counties ranged between 29 and 189. In only eighteen instances out of a total of 102, the number of counties in the state, were the figures within ten units of the average, showing that there was no close grouping about the average. In some of the other states the figures show a still wider range.

Based upon the theory that divorce is peculiarly an urban phenomenon, which it seems to be in the countries of Europe,[2] the Census Office has made a comparison for the period 1870-1900 between the rates of a group of city counties, *i. e.*, counties which contain a city of 100,000 population, or approximately so, provided that the cities embraced considerably more than one-half of the population of the counties in which they were situated, with these in the remainder of their respective states, as well as with the rates for the respective states as a whole. The comparison is made for 45 city counties in 28 different states including the District of Columbia.

[1] Report of 1908-9, pt. i, p. 16.

[2] *Cf. Bertillon, Etudé Démographique du Divorce*, pp. 54-55.

A summary of the results is given below: [1]

	Divorces, Annual Average,* per 100,000 Population.			
	1900.	1890.	1880.	1870.
For States having City Counties† ..	69	51	39	31
For City Counties.....	72	53	44	34
For Other Counties†	68	51	38	31

* For five-year period of which the census year was the median year.

† Exclusive of those counties for which divorce records were lacking or incomplete.

The results reveal a very small margin in favor of the city counties. Little change also is to be noted from decade to decade. An examination of the facts a little more in detail,[2] shows that in two states, New York and Oregon, the rate in the city in 1900 was less than in the other counties. In Pennsylvania it was the same. In New Jersey, Connecticut and Michigan the excess in urban counties is very slight. In the remaining twenty-two states the excess in urban counties ranged from 10 in Louisiana to 166 in Iowa. That the difference between the rates in city and other counties is not greatly significant is suggested by the fact that in all but 4 of the 28 states with city counties included in this survey, there are other counties, at least one, and sometimes several, which contain comparatively small populations and include no large town or city which show rates above, and in some instances far in excess of, the average for the state or for the city counties. It also appears from further observation that there are many

[1] Report of 1908-9, pt. i, p. 18. [2] *Ibid.*, tables 14 and 53.

counties containing cities of from 40,000 to 50,000 population where the rate is below that of the state or of the city counties. It appears somewhat doubtful, therefore, whether the case has been made out for the greater frequency of divorce in cities as a whole.

Rates in White and Colored Populations

The court records in the southern states rarely include information as to the color of litigants. Recourse must therefore be had to indirect sources of information in order to obtain comparisons of the relative frequency of divorce in the white and colored portions of the population. Court officers and divorce lawyers in the South estimate that from 50 to 90 per cent of all divorces are granted to colored people.[1] Mr. Wright made the statement in the former report that in the black belt "Nearly, if not quite, three-fourths of the divorces granted were to colored people".[2] This assertion was likewise based simply upon the opinions of persons in a position to judge of the matter with a fair degree of accuracy.

The only confirmation of these opinions, it seems, is to be found in the report of the conjugal condition of the people, presented in the Twelfth Census (1900). A table representing the facts for the two southern geographic divisions follows:[3]

[1] Report of 1908-9, pt. i, p. 20.

[2] Report of 1889, p. 132.

[3] Report of 1908-9, pt. i, p. 21.

Geographic Divisions.	Population 15 years of age and over, 1900.					
	Total.		Married.		Divorced.	
	Per cent white.	Per cent colored.	Per cent white.	Per cent colored.	Per cent white.	Per cent colored.
S. Atlantic.....	65.7	34.3	66.2	33.8	51.8	48.2
S. Central.....	70.0	30.0	71.1	28.9	47.0	53.0

These figures show that while marriage was relatively more frequent among the white people, divorce was relatively more frequent among the colored. Slight variations occur in the several states in the proportion of marriages in the white and colored populations,[1] but without exception, divorces were more frequent among the negroes. It should be borne in mind, however, that these figures are only approximately correct on account of the reluctance of persons generally to state their true marital condition. It is probable that many divorced persons reported themselves as single or widowed, and if this tendency was greater among the whites than among the blacks, as Mr. Merriam supposes,[2] then the result of the comparison is relatively of little value.

Professor Willcox, by a simple statistical induction, devised a method of testing the accuracy of Mr. Wright's assertion in regard to the prevalence of divorce among the negroes. He suggested that: "If the contention that the negroes receive a majority of the divorces be true, wherever the former are most numerous the latter would prob-

[1] *Cf. ibid.*, pt. i, p. 21.

[2] *Ibid.*, pt. i, p. 20.

ably abound. The states with the largest percentage of negroes would have the largest amount of divorce".[1]

Applying this test, he found no correlation between the percentage of negro population and the divorce rate in the several southern states, while in all the states except Arkansas, the divorce rate was higher in the white counties than in the black.

A similar comparison for the seven states having the highest percentage of colored population as reported in the Twelfth Census follows:[2]

POPULATION AT LEAST 15 YEARS OF AGE, 1900.

States.*	Per cent Colored.	Divorces per 100,000 Population.
Mississippi	57.9	73
Louisiana	46.6	42
Georgia	45.4	26
Alabama	45.0	69
Florida	43.9	97
Virginia	34.4	38
North Carolina	32.4	24

* Counties for which the divorce returns are defective are omitted.

The Census Office has also made the comparison for counties in this same group of states, and found that "In Florida, in 1900, the divorce rate decreased as the percentage of negroes in the total population increased; in Louisiana the reverse was the case. The other states show such a variety of conditions, that it seems impossible to draw any definite conclusions from the figures".[3] The general con-

[1] *The Divorce Problem*, p. 30.

[2] Report of 1908-9, pt. i, p. 21.

[3] *Ibid.*, pt. i, p. 21.

clusion of the report upon this subject is given as follows: "The statistics cannot be regarded, therefore, as having established any definite fact in regard to the comparative prevalence of divorce among the two races".[1]

Variations in Regard to Libellant.

The percentage of the total number of divorces granted upon the application of husbands and of wives, shows much variation between the periods covered by the two Federal reports, and among the several geographic divisions. The figures are presented in the following table:[2]

Geographic Divisions.	Per cent of Divorces.			
	1887–1906.		1867–1886.	
	Granted to			
	Husband.	Wife.	Husband.	Wife.
United States	33.4	66.6	34.2	65.8
N. Atlantic	31.2	68.8	32.4	67.6
S. Atlantic	46.9	53.1	49.2	50.8
N. Central	28.3	71.7	30.8	69.2
S. Central	43.8	56.2	46.0	54.0
Western	27.7	72.3	29.5	70.5

It will be observed that there has been a slight increase

[1] Report of 1908-9, pt. i, p. 22.

[2] *Ibid.*, pt. i, tables 25 and 26.

in divorces granted to wives over those granted to husbands and this has occurred with much uniformity in every geographic division. The proportion of those granted to husbands and to wives, however, varies rather widely between North and South, being almost equally divided in the two southern divisions, while in the North Atlantic, North Central and Western, the proportion granted to wives is 68.8, 71.1 and 72.3 per cent respectively. A comparison of the figures for Continental United States by averages for five-year periods, 1867-1906, shows, that for six periods the percentage granted to wives fluctuated between 64.3 and 66.3 per cent but for the last two, the proportion has steadily increased, being 66.9 and 67.2 per cent respectively. The figure for 1906 is 67.5 per cent.[1]

Variations in Regard to Cause.

The distribution of divorces in accordance with the party to which granted and for the causes specified shows some interesting variations. While the legal causes vary greatly among the several states, they may readily be grouped in several general classes, which, according to the classification arranged by Mr. Wright in the first report and adopted in the second,[2] includes adultery, cruelty, desertion, drunkenness, neglect to provide, combination of preceding causes, and all other causes.

[1] *Cf. ibid.*, pt. i, p. 24.

[2] *Ibid.*, pt. i, p. 25.

[1] DISTRIBUTION OF DIVORCES BY CAUSE IN FIVE-YEAR PERIODS, 1867–1906.

Per cent of Divorces.

Cause.	1902–1906.	1897–1901.	1892–1896.	1887–1891.	1882–1886.	1877–1881.	1872–1876.	1867–1871.
	Total.							
All causes	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Adultery	15.3	15.8	17.3	17.8	19.2	19.4	20.7	25.6
Cruelty	23.5	22.3	20.8	18.6	17.3	15.9	15.0	12.9
Desertion	38.5	39.0	38.5	39.9	39.6	39.6	35.5	35.7
Drunkenness	3.9	3.8	3.9	3.8	4.5	4.2	4.7	3.1
Neglect to provide	3.8	4.0	3.5	2.9	2.9	2.5	2.1	1.7
Combinations of preceding causes	9.0	9.1	9.7	10.4	11.1	12.1	13.0	13.3
All other causes[2]	5.9	6.1	6.3	6.5	5.4	6.4	7.0	7.7
	Granted to Husband.							
All causes	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Adultery	27.0	28.1	30.4	31.2	33.0	32.4	33.6	38.6
Cruelty	12.5	10.9	9.2	7.4	6.5	5.4	4.7	4.2
Desertion	49.6	50.0	48.5	49.4	48.0	46.9	44.8	40.3
Drunkenness	1.0	1.1	1.2	1.1	1.3	1.3	1.5	0.9
Neglect to provide	[3]	[3]	[3]	—	—	—	—	—
Combinations of preceding causes	4.4	4.3	4.9	4.8	5.7	6.4	7.3	7.8
All other causes[2]	5.5	5.6	5.8	6.2	5.4	7.5	8.1	8.2
	Granted to Wife.							
All causes	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Adultery	9.6	9.7	10.6	10.6	12.1	12.5	14.1	18.4
Cruelty	28.9	28.0	26.7	24.6	22.8	21.4	20.2	17.7
Desertion	33.1	33.5	33.4	34.8	35.3	35.8	33.8	33.1
Drunkenness	5.3	5.1	5.3	5.3	6.1	5.7	6.3	4.3
Neglect to provide	5.7	6.0	5.3	4.5	4.4	3.8	3.1	2.6
Combinations of preceding causes	11.2	11.5	12.2	13.5	13.8	15.1	16.0	16.4
All other causes[2]	6.2	6.4	6.5	6.7	5.5	5.9	6.5	7.5

[1] Report of 1908-9, pt. i, p. 26.

[2] Includes cause unknown.

[3] Less than one-tenth of one per cent.

[1] PER CENT OF DIVORCES GRANTED TO HUSBAND AND TO WIFE OF THE TOTAL NUMBER OF DIVORCES GRANTED FOR EACH PRINCIPAL CAUSE IN FIVE-YEAR PERIODS, 1867–1906.

Period of Years.	Per Cent of Total Number of Divorces.															
	For all Causes.		For Adultery.		For Cruelty.		For Desertion.		For Drunkenness.		For Neglect to Provide.		For Combinations of Preceding Causes.		For all Other Causes.	
	Granted to															
	Husband.	Wife.	Husband.	Wife.	Husband.	Wife.	Husband.	Wife.	Husband.	Wife.	Husband.	Wife.	Husband.	Wife.	Husband	Wife.
1867–1906.	33.6	66.4	58.3	41.7	15.2	84.8	42.0	58.0	9.7	90.3	(2)	100.0	16.9	83.1	32.7	67.3
1902–1906.	32.8	67.2	58.0	42.0	17.5	82.5	42.2	57.8	8.4	91.6	(2)	100.0	16.1	83.9	30.4	69.6
1897–1901.	33.1	66.9	58.9	41.1	16.1	83.9	42.5	57.5	10.0	90.0	(2)	100.0	15.6	84.4	30.2	69.8
1892–1896.	33.7	66.3	59.3	40.7	15.0	85.0	42.4	57.6	10.0	90.0	(2)	100.0	16.8	83.2	31.3	68.7
1887–1891.	34.9	65.1	61.2	38.8	13.8	86.2	43.2	56.8	9.9	90.1	.....	100.0	16.2	83.8	33.2	66.8
1882–1886.	33.7	66.3	58.1	41.9	12.7	87.3	40.8	59.2	10.1	89.9	.....	100.0	17.4	82.6	33.3	66.7
1877–1881.	34.5	65.5	57.7	42.3	11.8	88.2	40.8	59.2	10.6	89.4	.....	100.0	18.4	81.6	40.4	59.6
1872–1876.	33.7	66.3	54.8	45.2	10.6	89.4	40.3	59.7	10.6	89.4	.....	100.0	18.9	81.1	39.1	60.9
1867–1871.	35.7	64.3	53.8	46.2	11.6	88.4	40.3	59.7	10.1	89.9	.....	100.0	20.9	79.1	37.7	62.3

[1] Report of 1908-9, Pt. 1, Table 27, p. 96.

[1] PER CENT OF DIVORCES GRANTED TO HUSBAND AND TO WIFE OF THE TOTAL NUMBER OF DIVORCES GRANTED FOR EACH PRINCIPAL CAUSE BY GEOGRAPHIC DIVISIONS.

Geographic Divisions.	Per Cent of Total Number of Divorces.															
	For all Causes.		For Adultery.		For Cruelty.		For Desertion.		For Drunkenness.		For Neglect to Provide.		For Combinations of Preceding Causes.		For all Other Causes.	
	Granted to															
	Husband.	Wife.	Husband.	Wife.	Husband.	Wife.	Husband.	Wife.	Husband.	Wife.	Husband.	Wife.	Husband.	Wife.	Husband.	Wife.
	Period of 1887–1906.															
United States.	33.4	66.6	59.1	40.9	16.1	83.9	42.5	57.5	9.4	90.6	(2)	100.0	16.1	83.9	25.8	74.2
N. Atlantic...	31.2	68.8	45.4	54.6	9.6	90.4	36.1	63.9	13.7	86.3	.....	100.0	13.4	86.6	22.6	77.4
S. Atlantic ...	46.9	53.1	62.0	38.0	16.1	83.9	44.4	55.6	11.3	88.7	.....	.....	37.3	62.7	47.8	52.2
N. Central....	28.3	71.7	58.1	41.9	17.5	82.5	39.6	60.4	7.0	93.0	.....	100.0	12.2	87.8	23.4	76.6
S. Central	43.8	56.2	73.5	26.5	15.6	84.4	48.8	51.2	13.4	86.6	.....	100.0	26.5	73.5	34.9	65.1
Western.....	27.7	72.3	64.4	35.6	17.2	82.8	46.3	53.7	14.4	85.6	0.1	99.9	9.7	90.3	26.2	73.8
	Period of 1867–1886.															
United States.	34.2	65.8	56.4	43.6	11.9	88.1	40.6	59.4	10.3	89.7	.....	100.0	18.6	81.4	37.4	62.6
N. Atlantic...	32.4	67.6	44.8	55.2	7.4	92.6	35.7	64.3	14.6	85.4	.....	100.0	20.7	79.3	38.1	61.9
S. Atlantic ...	49.2	50.8	65.2	34.8	11.3	88.7	42.9	57.1	20.6	79.4	.....	.....	36.6	63.4	52.0	48.0
N. Central....	30.8	69.2	58.0	42.0	12.5	87.5	39.3	60.7	7.7	92.3	.....	100.0	13.9	86.1	30.3	69.7
S. Central	46.0	54.0	76.1	23.9	13.5	86.5	46.8	53.2	10.7	89.3	.....	100.0	36.5	63.5	44.5	55.5
Western.....	29.5	70.5	58.1	41.9	13.4	86.6	46.5	53.5	25.4	74.6	.....	100.0	10.6	89.4	47.1	52.9

[1] Report of 1908–9. Tables 25–26, pp. 94–95.

[2] Less than one-tenth of one per cent.

The relative importance of the different classes of causes is shown in the table on page 87. The percentage is given for each cause by five-year periods, 1867-1906, as well as the distribution on the basis of the party to which granted. The three major causes, it will be noted, in the order of their importance are, desertion, cruelty, and adultery. This order has changed since the beginning of the period, when it stood desertion, adultery, and cruelty. Again, divorces granted to husbands and to wives show a different order. For husbands it is desertion, adultery and cruelty, and for wives, desertion, cruelty and adultery. Divorces obtained by husbands for wives' desertion and cruelty show a steady increase, while those for adultery decline. Of those granted to wives, there is an increase for husbands' cruelty and a decline for adultery, while desertion remains the same.

The table on page 88 shows the percentage of divorces granted to husbands and to wives of the total number granted for each principal cause by five-year periods, 1867-1906. By a comparison of the two tables, several distinct movements can be traced. For example, while adultery declined in relative importance from 25.6 to 15.3 per cent of all divorces granted during the period, the proportions of these granted to husbands and to wives show considerable variation. In the beginning of the period 53.8 per cent of all divorces granted for adultery were granted on the plea of husbands. By the period 1887-1901 the number had grown to 61.2 per cent, and again, by the end of the period it had declined to 58.0 per cent. Cruelty on the whole increased from 12.9 to 23.5 per cent, and the proportion of that number granted to husbands increased from 11.6 to 17.5 per cent. The general increase in cruelty, therefore, is due chiefly to the increasing cruelty of wives. It appears also from these tables that more wives are deserting their husbands than formerly.

Another large group of variations is presented in the table on page 89. The proportion of divorces granted to husbands and to wives for the major causes varies widely in the different geographic divisions, and these variations are still greater in the several states. From the table it will be seen that the number of divorces for adultery obtained by husbands in the South Central division is abnormally high, being 76.1 and 73.5 per cent in the first and second reports respectively. It will be noted likewise, that the North Atlantic division is the only one in which wives obtain more divorces for adultery than husbands. One-fourth of all divorces for drunkenness in the Western division in the period, 1867-1886, was granted to husbands and one-fifth in the Southern. In the second period, 1887-1906, the divorces thus obtained approached the normal rate of one in ten.

Many comparisons among these tables may be made by the student who is interested in this phase of the divorce movement. Enough have been pointed out to indicate their presence and nature. It seems unnecessary, therefore, further to enlarge upon them here.

Condition as to Children

The distribution of divorce in respect to children shows little variation between the two reports.[1] The percentage of cases reporting children in the period, 1887-1906, was 38.9, while the instances "reporting no children" or "not reporting as to children" were 60.2 per cent. The corresponding figures for the period, 1867-1886, were 39.4 and 60.6. It thus appears that children are affected in about two divorces out of five.

Of the 376,694 divorces in which children are reported in the period, 1887-1906, 21.8 per cent or 82,207 were granted on the plea of husbands, and 78.2 per cent or 294,-

[1] *Cf.* Report of 1908-9, pt. i, pp. 40-42.

487 on the plea of wives. It seems then, that while wives secure twice as many divorces as husbands of the total number granted, in the cases in which children are involved, they secure almost four times as many.

Again, the 82,207 divorces granted to husbands and the 294,487 granted to wives, in which children are reported, constitute respectively 26.0 and 46.8 per cent of the total number of divorces granted to each group in the period, 1887-1906. The percentages of distribution in respect to cause is displayed in the following table:[1]

Cause.	Per Cent of Divorces, 1887-1906.			
	Reporting Children.		Reporting no Children, or not Reporting as to Children.	
	Granted to			
	Husband.	Wife.	Husband.	Wife.
All Causes	26.0	46.8	74.0	53.2
Adultery	27.7	42.3	72.3	57.7
Cruelty	33.4	48.9	66.6	51.1
Desertion	23.4	43.9	76.6	56.1
Drunkenness	33.2	55.1	66.8	44.9
Neglect to Provide	....	49.1	....	50.9
Combinations of Preceding Causes	30.5	53.1	69.5	46.9
All Other Causes	21.2	39.1	78.8	60.9

[1] *Cf.* Report of 1908-9, pt. i, p. 42.

CONDITION AS TO OCCUPATION

An occupation was returned for only 24.0 per cent of divorced husbands in the period 1887-1906. The distribution of these by states shows a range between .1 per cent in Maine and 81.1 per cent in New Jersey. It is possible also, that in cases in which alimony is involved the occupation of the husband is more likely to be recorded, making the result unfair to the property-owning and large-income classes. The figures are, therefore, too incomplete and too liable to error to provide a basis for valuable generalization in regard to occupations.

Nevertheless, for purposes of comparison the Census Office has made a classification of occupations, and has shown the distribution of divorces in these groups. These are compared with the distribution of occupations of married males for which an occupation was reported in the Twelfth Census (1900). Omitting the separate occupations in the several groups, we present simply the group distribution:[1]

[1] *Cf.* Report of 1908-9, pt. i, p. 43.

Occupations.	Husbands Divorced (1887-1906) for whom Occupation was Reported.		Married Males Having an Occupation (Twelfth Census).	
	Number.	Per Cent.	Number.	Per Cent.
All Occupations	226,760	100.0	13,150,671	100.0
Agricultural Pursuits	64,420	28.4	5,186,449	39.4
Professional Service	12,510	5.5	508,975	3.9
Domestic and Personal Service	54,365	24.0	1,703,674	13.0
Trade and Transportation.	44,051	19.4	2,387,517	18.2
Manufacturing and Mechanical Pursuits	51,414	22.7	3,364,056	25.6

These figures seem to indicate that divorces are relatively infrequent in the agricultural class and frequent in the professional service, and in the domestic and personal service groups. The high rate in the domestic and personal service group is due very largely to the presence of a class designated "Laborers (not specified)". It is probable that many of these are agricultural laborers. A computation on the basis of a crude guess that one-third of these should be so classified, would change the percentages of these two general groups, agricultural pursuits and domestic and personal service, to 34.4 and 18.0 per cent respectively. This is probably much nearer the facts than the figures of the table indicate. A table constructed on the basis of this correction would then show the relative frequency of divorce in the several groups, arranged in order from highest to lowest, to be as follows:

Professional service.
Domestic and personal service.
Trade and transportation.
Manufacturing and mechanical pursuits.
Agricultural pursuits.

Based upon the returns from the nine states in which the figures were most complete the Census Office has arranged a table showing the "rank of the specified occupation in the order of the increasing ratio of married males (1900) to husbands divorced (1887-1906)". The order for 39 occupations follows:[1]

Actors, professional showmen, etc.
Musicians and teachers of music.
Commercial travelers.
Telegraph and telephone operators.
Physicians and surgeons.
Barbers and hair dressers.
Servants and waiters.
Bartenders.
Restaurant and saloon keepers.
Hotel keepers.
Tobacco and cigar factory operatives.
Printers, lithographers and pressmen.
Bookkeepers, clerks, stenographers, etc.
Steam railroad employees.
Painters, glaziers and varnishers.
Bakers.
Laborers (not specified).
Agents.
Salesmen.
Butchers.
Tailors.

[1] *Cf.* Report of 1908-9, pt. i, p. 47.

Plumbers and gas and steam fitters.
Machinists.
Merchants and dealers.
Lawyers.
Bankers, brokers and officials of banks, etc.
Masons (brick and stone).
Boot and shoe makers and repairers.
Teachers and professors in colleges.
Watchmen, policemen, firemen, etc.
Manufacturers and officials, etc.
Engineers and firemen (not locomotive).
Miners and quarrymen.
Carpenters and joiners.
Farmers, planters and overseers.
Blacksmiths.
Draymen, hackmen, teamsters, etc.
Clergymen.
Agricultural laborers.

CHAPTER VI

Civil Legislation

It is not within the province of this investigation to present a complete digest of civil legislation in respect to divorce. Our purpose is merely to show the trend legislation has taken in the United States and to trace its effects, during the period covered by the two divorce reports, in those respects which bear directly upon the divorce movement.

Professor Willcox, in his study of the influence of legislation on divorce during the period of the first report,[1] has demonstrated conclusively that there is practically no causal connection between the changes in the law and the rise in the divorce rate. It is a fair presumption that the same thing is true of the second report. What do the facts reveal?

If the divorce movement is in any way controlled by "the laws governing marriage and divorce", then the direction which this movement has taken would certainly indicate that there had been a general relaxation either on the part of the law or in respect to its administration. As a matter of fact, the situation is precisely the reverse. The whole trend of both legislation and administration has been toward greater stringency. In order to establish this fact, a summary of the changes which have taken place in the marriage and divorce laws of the various states and territories since the period covered by the first report, is herewith presented. The facts are taken from the digest of the

[1] *The Divorce Problem*, part ii.

laws presented in the recent "Report on Marriage and Divorce of the Census Office." [1]

CHANGES IN MARRIAGE LAW

It is claimed on the part of some, that a more careful oversight in regard to marriage, would result in fewer infractions of the marriage bond. Professor Howard lays great emphasis upon this point. He says:

> No one who in full detail has carefully studied American matrimonial legislation can doubt for an instant that, faulty as are our divorce laws, our marriage laws are far worse. There is scarcely a conceivable blunder left uncommitted; while our apathy, our carelessness and levity, regarding the safeguards of the marriage institution, are well-nigh incredible. We are far more careful in breeding cattle or fruit trees than in breeding men and women. Let me repeat what I have more than once written: the great fountain head of divorce is bad marriage laws and bad marriages. The center of the dual problem of reforming and protecting the family is marriage and not divorce. One "Gretna Green" for clandestine marriages, like that of St. Joseph, Mich., is the source of more harm to society than are a dozen "divorce colonies" like that at Sioux Falls, S. D. Indeed the "marriage resort" is the fruitful mother of the "divorce colony". There is crying need for a higher ideal of the marriage relation; for more careful "artificial selection" in wedlock. While bad legislation and a low standard of social ethics continue to throw recklessly wide the door which opens to marriage, there must of necessity be a broad way out.[2]

A little later, while adhering to his assertion in respect to bad marriages, Professor Howard qualifies his statement in regard to the effect of bad marriage law. He says:

[1] Pt. i, ch. ii-iii.

[2] *Publications of The American Sociological Society*, vol. iii, p. 159.

It is freely admitted that bad marriage law is not the chief source of divorce. Nevertheless, it will account for the dissolution of wedlock in far more instances than will a bad divorce law. For, in reality, clandestine marriages are very often due to this cause; and clandestine marriages are apt to terminate in divorce. Moreover, bad marriage laws may permit or fail to prevent the union of those who are unfit because of venereal disease, insanity, crime, or degeneracy. Thus there is a radical difference between a bad divorce law and a bad marriage law.[1]

While we do not wholly agree with Professor Howard that "the great fountain head of divorce is bad marriage law and bad marriages," nor even with the modified statement just quoted, nevertheless, we are quite willing to concede for the influence of marriage law at least as much as he claims for divorce law when he says: "From all the evidence available, it seems almost certain that there is a margin, very important though narrow, within which the statute-maker may exert a morally beneficent, even a restraining influence."[2]

Relatively few changes have occurred in the marriage laws in the United States since 1886, and most of these have been made in regard to matters which can have little or no effect upon the divorce rate.

Fourteen states have raised, while none has lowered, the "age at which minors are capable of marrying", or the "age below which parental consent is required".

Eighteen states have enacted statutes or amended old ones on the subject of "Prohibited Marriages". Six western and southern states, California, Louisiana, Mississippi, Ok-

[1] *Publications of The American Sociological Society*, vol. iii, p. 178.
[2] *Ibid.*, p. 152.

lahoma, Oregon and Texas, have enacted laws since 1886, prohibiting the merriage of white persons with negroes or mulattoes. Four of these, California, Mississippi, Oregon and Texas, included Mongolians in the prohibition. Five states, Indiana, Kansas, Minnesota, New Jersey and Ohio, have directed their changes in legislation in regard to prohibited marriages against the propagation of the insane. Five states, Illinois, Montana, New York, North Carolina and South Dakota, and the District of Columbia, have included in prohibited marriages, those of divorced persons for a longer or shorter period after the granting of the decree. Wisconsin has restricted both the insane and the divorced.

Apparently the only direct changes in marriage laws, intended to affect divorces, are those restricting the remarriage of divorced persons. Eighteen states and the District of Columbia have made changes in their laws in this regard since 1886. Alabama, by an act in 1903, made it " unlawful for either party to marry pending an appeal from the decree of divorce, or within the sixty days allowed for the taking of such an appeal ". California, Colorado, Illinois and Wisconsin make the marriage of divorced persons illegal if contracted within a year from the granting of the decree. California decrees are now interlocutory. Illinois provides " that when the cause is adultery the guilty party shall not marry any other person within two years ". The District of Columbia, since 1901, permits the innocent party only, in a divorce for adultery, to marry any other person. Idaho, Kansas, Minnesota, Oklahoma, Rhode Island and Washington declare marriage illegal if contracted within less than six months after the former marriage has been dissolved or annulled. Rhode Island and Washington issue decrees *nisi* only. Kansas requires an additional period of thirty days after the final judgment of an appellate court if an

appeal has been taken. Michigan allows marriages only within " such time as shall be fixed by the court, and stated in the decree, provided that such time shall not exceed the period of two years from the time such decree is granted ". New York, since 1905, has granted only interlocutory decrees, becoming final after a period of three months. Furthermore, " When absolute divorce is granted the plaintiff may marry again during the lifetime of the defendant; but a defendant adjudged to be guilty of adultery cannot marry again until the death of the plaintiff, unless the court in which the judgment is rendered modifies such judgment, which modification can only be made upon satisfactory proof that five years have elapsed since the decree of divorce was rendered, and that the conduct of the defendant since the dissolution of such marriage has been uniformly good ".

North Carolina, in 1895, provided that after a divorce granted for desertion, the party guilty of abandonment could not marry during the lifetime of the innocent spouse. An amendment in 1903 prohibited the marriage within five years after the decree. By an act in 1905, this amendment was repealed.

Maine, Maryland, Montana and North Dakota are the only states which have relaxed their restrictions in regard to remarriage. Maine, in 1887, repealed a law which prevented remarriage within two years of the final decree and not afterwards except by permission of the court. Maryland omitted in the code of 1888, the previous provision which prevented the remarriage of the defendant, in a decree granted for adultery or abandonment, with any other person during the lifetime of the plaintiff. Montana repealed, in 1895, the provision that after divorce the innocent party could not marry within two years and the guilty party within three. North Dakota, in 1901, changed its law so that instead of preventing the marriage of the guilty

party during the lifetime of the innocent, both parties in any divorce are restricted only for a period of three months.

CHANGES IN DIVORCE LAW

Only four groups of changes in the divorce laws of the states since 1886 have direct bearing upon the divorce rate, viz., those which have to do with provisions for notice to the defendant, provisions for defending the suit, regulations regarding previous residence, and statutory grounds for divorce.

Nine states have enacted laws regarding notice to the defendant when non-resident, or when the residence is unknown. They are all of the same nature and define more definitely the process by which publication is to be made.

Five states, including the District of Columbia and Oklahoma Territory, enacted laws providing that in cases in which the defendant does not appear, the court shall provide an attorney, who shall represent the state in order to secure a fair and impartial hearing for the case. Vermont had such a provision but repealed it in 1890.

Eighteen states and territories made changes in regard to residence requirements of those making application for divorce under their jurisdictions. Louisiana is the only state having no statute in regard to residence. Georgia had none until 1901, when an act provided "that the libellant must have been a bona-fide resident of the state twelve months before filing the petition". North and South Dakota each raised their requirements from ninety days to one year, except that in the case of South Dakota, where the defendant is a resident, six months only is required. Arizona, California, New Mexico and Wyoming each raised their residence requirement from six months to one year. Rhode Island increased its requirement from one to two years, and the District of Columbia, from two to three.

Idaho changed its requirement in case of a suit on the ground of permanent insanity from six months to six years and later, in 1903, relaxed it to one year.

Colorado, Michigan and Mississippi each now require one year's residence of the plaintiff in the suit unless, in the case of Colorado, the cause is adultery or extreme cruelty committed in the state, and in the case of Michigan and Mississippi, unless it is an affair of a bona-fide citizen of the state, in which event the rule is suspended. Mississippi further enacted, in 1906, that "the court shall not take jurisdiction in any case where the proof shows that a residence or domicile was acquired in the state with a purpose of securing a divorce".

Florida now requires two years' residence except that, since 1899, a divorce may be obtained at any time if the defendant has been guilty of adultery in the state. Since 1897, Maine has relaxed its one-year requirement if the libellee is a resident of the state. This clause was repealed in 1899, but re-enacted in 1903.

New Jersey, Oklahoma and Vermont have reduced their residence requirements. In New Jersey, since 1902, the three years' residence required of one of the parties has been reduced to two years. According to the Nebraska General Statutes in force in Oklahoma in 1890, six months' residence was required. The first legislative assembly raised this requirement to two years, but the Revised and Annotated Statutes of 1903 require only a residence of ninety days. This action conflicted with an act of Congress of 1896 which decreed, "that no divorce shall be granted in any territory for any cause unless the party applying for the divorce shall have resided continuously in the territory for one year next preceding application". Vermont reduced its residence requirement from two years in the state and

one year in the county where the application was made, to one year in the state and three months in the county.

Only eighteen states and territories revised their legal causes for divorce which could in any way affect the increase of divorce. Idaho and Utah added insanity to the list of causes. Florida and North Dakota enacted similar statutes, but later repealed them. Arkansas repealed its insanity clause in 1895. Arizona increased the period of "abandonment and failure to provide" from six months to two years in 1901 and again lowered it to one year in 1903. Drunkenness as a cause was omitted in 1901, but was reënacted in 1903. Maine, Massachusetts, Mississippi and Rhode Island made the excessive use of opium, morphine and other drugs a cause. Massachusetts further repealed, as a cause, an act which provided that divorce should be allowed "when either party had separated from the other without his or her consent, and has united with a religious sect that professes to believe the relation of husband and wife void or unlawful, and has continued united with such sect or society for three years, refusing during that term to cohabit with the other party". Rhode Island also, in 1893, made "separation for ten years" a cause, and in 1902, fixed the period of neglect necessary for divorce at one year. Kentucky, in 1893, made habitual drunkenness on the part of the wife for one year a cause for divorce on the part of the husband. In 1895, Minnesota reduced the period of desertion from three years to one. Montana reduced the causes in that state from eight to six, omitting impotency and previous marriage. The two causes relating to desertion were condensed into one and a new cause of wilful neglect was added. New Jersey reduced the causes from five to four, omitting previous marriage and marriage within prohibited degrees, and adding as a cause, "when either of the parties are incapable of consenting, and the

marriage has not been subsequently ratified". New Mexico, in 1887, increased its causes by adding drunkenness and neglect, and further, in 1901, by including impotency, ante-nuptial pregnancy, and conviction of felony. North Carolina, by separate acts, made felony, refusal to cohabit, abandonment, and cruelty causes, but repealed them in 1905, leaving only the four original causes. In 1893, Oklahoma added four new causes—previous marriage, impotency, ante-nuptial pregnancy, and fraudulent contract—to those enacted by the first territorial legislature. Virginia, in 1894, reduced the period of abandonment necessary to obtain a divorce from five years to three.

Additional changes have been made in the laws governing limited divorces, but since limited divorces are not even classified in the report, the influence of these changes cannot be determined.

EFFECT OF THE CHANGES

Two generalizations may be made upon the changes noted. In the first place, they have been made, for the most part, either by states which are lax in their marriage and divorce laws, or by others which sought to improve some phase of their codes upon this subject, and the result has been the establishment of greater uniformity among the several states. This is noticeably the case in regard to restrictions upon remarriage of divorced persons, previous residence requirements for the plaintiff in divorce proceedings, and in the statutory grounds for divorce.

In the next place, there has been, on the whole, a decided tendency toward greater stringency in the legal regulations regarding both marriage and divorce.

Notwithstanding these facts, during the same period the divorce rate has gained "a three-fold velocity" and no direct correlation can be discovered between these two groups

attachments have been formed and who proceed to secure legal separation in order to legitimate their new relationships. The public mind is shocked at remarriage immediately after divorce as if the case were similar to remarriage after the death of a husband or wife. As a matter of fact, only 12.7 per cent of the divorces granted in the period of 1887-1906, in which the length of time between separation and divorce was known, were obtained in less than a year after separation, while 72.2 per cent ranged between one and five years.[1]

It is probable that the chief effect of legislation of this nature is either to hasten divorces after separation in order that the parties may be free to remarry in case they so desire, a condition which would lessen the opportunity for reconciliation, or to defer marriage and thus increase the probability of sexual irregularity. As a rule, the only perceptible influence of restrictions upon marriage is merely to increase illegitimacy,[2] but with the increasing knowledge of the means of preventing conception, this index is less to be relied upon than formerly.

Fairly complete statistics of the remarriage of divorced persons have been published by Connecticut, Maine and Rhode Island for the last fifteen years.[3] No changes in the laws regarding remarriage have taken place in Connecticut or Maine during that period. In Rhode Island a restriction was imposed in 1902; notwithstanding this change, however, the remarriage of divorced persons increased the following year. For the effect produced in other states making restrictions upon remarriage, our only clue is to be found in the general marriage rate, and the remarriage of

[1] Census Report on *Marriage and Divorce*, 1908-9, pt. i, p. 40.

[2] Willcox, *op. cit.*, p. 60.

[3] Census Report on *Marriage and Divorce*, 1908-9, pt. i, p. 49.

divorced persons in any year probably constitutes too small a proportion of the total number of marriages, ranging from five to eight per cent in the three states above mentioned, to effect very greatly the total number of marriages, even though fluctuations might occur in their number as a specific result of legislation. At any rate, the result of legal changes restricting remarriage was not sufficient to retard the general marriage rate in eleven of the fifteen states making such restrictions, for these states show a positive increase in the number of marriages in the year following such enactments. The decrease in two of the others occurred in 1894, when the marriage rate for the entire country was diminished on account of the financial depression.[1] In one other case, that of Kansas, the restriction was so slight as to be practically of no consequence, leaving only one state, California, for which no other explanation is apparent, although it may easily be due, in this instance, to other causes. Even here the general marriage rate only slightly declined for the year following the enactment and regained the normal rate in the second year.

That little importance should be attached to the effect of legislation in the fluctuations of the marriage rate is exemplified by the fact, that of the four instances in which restrictions upon remarriage were relaxed, marriage in one state actually declined the year following the enactment, revealing clearly the presence of more potent causes which may be present as well in all the other cases. For one other of these states no statistics of marriage are given for the year following the change while the two remaining show merely the increase common to the country as a whole.

So far as the effects of these legal changes upon divorce are concerned, they are too remote to be discernible. No

[1] Census Report on *Marriage and Divorce*, 1908-9, pt. i, pp. 8-9.

correlation whatever is to be found between the fluctuations of the marriage and divorce rates in the years following the enactments.

The effect of the first two groups of changes modifying divorce procedure, viz., those regarding notice to the defendant and those making provision for defense, cannot with certainty be determined. There has been a slight increase in contested cases during the twenty years, but whether or not this increase has been attributable to the cases where the notice has been by publication, the statistics do not reveal.[1]

Since 28.1 per cent of all divorces applied for in the period 1887-1906 were denied or left pending,[2] while only 15.4 per cent were contested,[3] it is certainly apparent that defense or contest is only one factor in determining how many divorces are to be denied. For proof of this assertion we may cite the instances of the states which enacted laws providing for defense where the suit was not contested. In all the five cases the number of applications for divorce which were denied was below the average for the country as a whole, but it is also to be noted that with one exception, it was below the average before the provision for defense was made. The law is not, therefore, the determining factor.

A careful observation of the number of divorces granted in the year following the enactments increasing the residence requirements for the libellant in divorce proceedings in the various states, reveals the following: Six of the fifteen, California, Colorado, Florida, Georgia, Maine and Mississippi, show a normal increase in divorces and betray no traces of any effect of the changes in the law. New Mexico shows the same number for 1897 as for 1896, the

[1] Census Report on *Marriage and Divorce*, 1908-9, pt. i, p. 32.

[2] *Ibid.*, p. 47.

[3] *Ibid.*, p. 32.

year in which the law was passed. Idaho reveals an increase after the passage of its law in 1895 requiring longer residence and a positive decrease after relaxing the law in 1903. A decrease followed the enactment of a law in Michigan in 1887, which required two years' residence instead of one for a cause which occurred outside the state, but the number remained stationary when this requirement was again relaxed to one year in 1895. The six remaining states show a decrease of divorces in the year following the enactments, of from twenty to fifty per cent. With the exception of North and South Dakota these losses were nearly or quite regained the second year. This would serve to demonstrate, except where migration in order to obtain divorces, as had been the case in the Dakotas, was a dominant factor, that legislation of this sort may result in deferring or distributing divorces, but that it has little or no effect in diminishing them. The two remaining states and the Territory of Oklahoma, in which the residence requirements were relaxed, exhibit merely a normal increase in the year following such changes. The fact that a part of the states show no effect from the changes in the law, while others exhibit a result the reverse of that which the law was intended to secure, serves to render untrustworthy, sweeping generalizations based upon apparent correlations between the changes in the law and the divorce rate in the remaining states.

Professor Willcox has shown the fallacy of attaching any importance to correlations between changes in the causes for which divorces are granted and the divorce rate. He says: "To establish a connection between the two as even probable, the change in the number of divorces must be shown to occur solely or mainly in the classes affected by the law".[1] Employing this method of comparison, we have

[1] *Op. cit.*, p. 48.

exhibited in the table on the following page, the result of the changes introducing causes in twelve of the eighteen states in which changes in causes for divorce were made. Reference to the table will reveal the fact that not in a single instance is there the slightest suggestion that the divorce rate has been materially influenced by the introduction of new causes. Based upon the experience of Mississippi and Rhode Island, there is no reason to suppose that divorces for intoxication from drugs other than alcohol, constituted any considerable proportion of the total divorces for drunkenness. Since the effect of repealing or otherwise modifying causes is still of less consequence, the slight changes occurring in no way affecting the general rate, it has not been deemed worth while to present the figures here.

The analysis of specific effects of definite legislation, therefore, merely substantiates our general conclusion as to the effect of changes in legislation as a whole.

Changes Introducing Causes.

State.	Cause.	Year Introduced.	Total Divorces.[1]					For Specified Cause.[2]				
Idaho	Insanity.	1895	134,	139,	129,	162,	136	1,	0,	1,	0,	1
Utah	"	1903	350,	410,	355,	387,		3,	2,	2,	2	
Florida	"	1901	499,	545,	589,	659,	752	1,	2,	3,	[3]	
North Dakota	"	1899	386,	202,	174,	193,	265	4,	3,	8,	[3]	
Maine	Intoxication from use of opium or other drugs.	1899	795,	807,	791,	911,	951	[4]116,	117,	114,	124,	127
Massachusetts	"	1899	764,	663,	807,	810,	1,181	[4]77,	81,	100,	106,	153
Mississippi	Excessive use of opium, morphine and other drugs.	1892	497,	544,	557,	640,	981	0,	0,	0,	0,	0
Rhode Island	Excessive use of opium, morphine or chloral.	1896	359,	373,	409,	420,	484	1,	0,	2,	1,	0
Kentucky	Drunkenness of wife.	1893	1,286,	1,326,	1,434,	1,500,	1,619	7,	2,	1,	4,	1
New Mexico	Drunkenness and neglect.	1887	57,	46,	59,	72,	84	0,	1,	0,	0,	0
New Mexico	Impotency, ante-nuptial pregnancy, conviction of felony.	1901	153,	167,	192,	181,	212	[5]0,	4,	4,	4,	2
Oklahoma	Previous marriage, impotency, ante-nuptial pregnancy, fraudulent contract.	1893	180,	262,	356,	490,	302	[6]0,	0,	1,	7,	1
Montana	Wilful neglect.	1895	273,	244,	319,	319,	387	2,	16,	26,	26,	40

[1] The figures are for five consecutive years beginning with the year in which the new cause was introduced.
[2] Number of divorces granted for specified cause in the same years.
[3] Law repealed.
[4] In this state intoxication was extended to include intoxication from opium and other drugs. No separate statistics were given for the intoxication from drugs. The figures given are for intoxication.
[5] No divorces were granted for impotency or ante-nuptial pregnancy. The figures are for felony or wherever combined with other causes.
[6] No divorces were granted for previous marriage. Figures are for all other causes, even where specified causes were combined with other causes.

CHAPTER VII

The National Congress on Uniform Divorce

By an act of the General Assembly of the Commonwealth of Pennsylvania approved March 16, 1905, the governor was authorized to appoint a commission to codify the laws relating to divorce, and to coöperate with other States in securing uniformity of divorce legislation in the United States, and further,

to comunicate with the Governors of the several states of the Union, requesting them to coöperate in the assembling of a Congress of Delegates, to meet at Washington in the near future, for the purpose of examining, considering and discussing the laws and decisions of the several states upon the subject of Divorce, with a view to the adoption of a draft of a general law to be reported to the Governors of all the states, for submission to the Legislatures thereof, with the object of securing, as nearly as possible, uniform statutes upon the matter of Divorce throughout the nation.[1]

In response to the invitation of the Governor of Pennsylvania, the Congress convened in Washington, February 19-22, 1906. Forty-two states and territories were represented by more than one hundred delegates. By arduous and protracted work the Pennsylvania delegation had prepared a series of resolutions embodying the results of a careful examination and comparison of the divorce statutes of the several states. The Congress with some changes

[1] *Report from The Pennsylvania Commission on Divorce*, p. 1.

adopted the resolutions submitted by the Pennsylvania delegation, which, as finally revised, are as follows:

I. *As to Federal Legislation.*

1. It is the sense of the Congress that no Federal divorce law is feasible, and that all efforts to secure the passage of a constitutional amendment—a necessary prerequisite—would be futile.

II. *As to State Legislation.*

1. All suits for divorce should be brought and prosecuted only in the state where the plaintiff or defendant had a *bona fide* residence.

2. When the courts are given cognizance of suits where the plaintiff was domiciled in a foreign jurisdiction at the time the cause of complaint arose, it should be insisted that relief will not be given unless the cause of divorce was included among those recognized in such foreign domicile.

When the courts are given cognizance of suits where the defendant was domiciled in a foreign jurisdiction at the time the cause of the complaint arose, it should be insisted that relief by absolute divorce will not be given unless the cause of divorce was included among those recognized in such foreign domicile.

3. Where jurisdiction for absolute divorce depends upon the residence of the plaintiff, not less than two years' residence should be required on the part of the plaintiff who has changed his or her state domicile since the cause of divorce arose.

Where jurisdiction for absolute divorce depends upon the residence of the defendant, not less than two years' residence should be required on the part of the defendant who has changed his or her state domicile since the cause of divorce arose.

4. An innocent and injured party, husband or wife, seeking a divorce, should not be compelled to ask for a dissolution of the bonds of matrimony, but should be allowed, at his or her

option, at any time, to apply for a divorce from bed and board. Therefore, divorces *a mensa* should be retained where already existing, and provided for in states where no such rights exist.

5. The causes for divorce existing by legislative enactment may be classed into groups that would be approved by the common consent of all the communities represented in this Congress, or at least substantially so. These causes should be restricted to offences by one party to the marriage contract against the other of so serious a character as to defeat the objects of the marital relation; and they should never be left to the discretion of a court, but in all cases should be clearly and specifically enumerated in the statute. Uniformity in this branch of the law is much to be desired; but the evils arising from diverse causes in the different states will be very greatly abated if migratory divorces are prohibited.

6. While the following causes for annulment of the marriage contract, for divorce from the bonds of matrimony, and for legal separation or divorce *a mensa* seem to be in accordance with the legislation of a large number of American states, this Congress, desiring to see the number of causes reduced rather than increased, recommends that no additional causes should be recognized in any state; and in those states where causes are restricted, no change is called for:

A. Causes for Annulment of the Marriage Contract.

1. Impotency.
2. Consanguinity and affinity, properly limited.
3. Existing marriage.
4. Fraud, force or coercion.
5. Insanity, unknown to the other party.

B. Causes for Divorce—*a. v. m.*

1. Adultery.
2. Bigamy.
3. Conviction of crime in certain classes of cases.
4. Intolerable cruelty.
5. Wilful desertion for two years.
6. Habitual drunkenness.

C. Causes for Legal Separation, or Divorce—*a. m.*

1. Adultery.
2. Intolerable cruelty.
3. Wilful desertion for two years.
4. Hopeless insanity of husband.
5. Habitual drunkenness.

7. If conviction for crime should be made a cause for divorce, it should be required that such conviction has been followed by a continuous imprisonment for at least two years, or in case of indeterminate sentence, one year; and that such conviction has been the result of trial in some one of the states of the Union, or in a Federal court, or in some one of the countries or courts subject to the jurisdiction of the United States, or in some foreign country granting a trial by jury, followed by an equally long term of imprisonment.

8. A decree should not be granted *a. v. m.* for insanity arising after marriage.

9. In those states where desertion is a cause for divorce it should never be recognized as a cause unless it is wilful and is persisted in for a period of at least two years.

10. A divorce should not be granted unless the defendant has been given full and fair opportunity by notice brought home to him to have his day in court, when his residence is known or can be ascertained.

11. Any one named as co-respondent should in all cases be given an opportunity to intervene.

12. Hearings and trials should always be before the court, and not before any delegated representative of it; and in all uncontested divorce cases, and in any other divorce case where the court may deem it necessary or proper, a disinterested attorney should be assigned by the court, actively to defend the case.

13. A decree should not be granted unless the cause is shown by affirmative proof, aside from any admissions on the part of the respondent.

14. A decree dissolving the marriage tie so completely as

to permit the remarriage of either party should not become operative until the lapse of a reasonable time after hearing or trial upon the merits of the cause. The Wisconsin, Illinois and California rule of one year is recommended.

15. In no case should the children born during coverture be bastardized, excepting where they are the offspring of bigamous marriages or the impossibility of access of the husband has been proved.

16. Each state should adopt a statute embodying the principle contained in the Massachusetts act, which is as follows: "If an inhabitant of this Commonwealth goes into another state or country to obtain a divorce for a cause which occurred here while the parties resided here, or for a cause which would not authorize a divorce by the laws of this Commonwealth, a divorce so obtained shall be of no force or effect in this Commonwealth."

17. Fraud or collusion in obtaining or attempting to obtain divorces should be made statutory crimes by the criminal code.[1]

At the same session in which the foregoing resolutions were adopted and at the adjourned session which met in Philadelphia, November 13-14, the same year, the Congress adopted a "Draft of Uniform Law" which embodied the principles contained in the resolutions.

Owing to the diversity in the various states in regard to questions of pleading and procedure, in which there seemed to be little hope of obtaining uniformity, the proposed law dealt chiefly with questions of jurisdiction, publicity of hearings, protection of absent defendants, prevention of speedy remarriages, the effect of foreign decrees, and the evasion of the laws of any state.

In the address accompanying the draft of the law, the

[1] *Report from the Pennsylvania Commission on Divorce*, pp. 3-8.

Committee on Resolutions makes the following statement concerning the purpose of the law: "It is fully realized that the law now proposed is not a complete or ideal uniform divorce law, but that it is only the best law in that direction which it now seems practicable to obtain".[1] In the Report of the Pennsylvania Commission we have the following explanation:

It must be understood, that while the statute as submitted by the Committee enumerated certain causes for Divorce, these causes were not *recommended* either by the Committee or by the Congress, it being understood that each state would deal with the question of causes in accordance with the sentiment of that state. Those enumerated represent the prevailing sentiment in a large majority of the states.[2]

The proposed law is, therefore, a digest of present enactments rather than an effort to frame an ideal statute. The Congress had concern for what might be secured in the way of uniformity rather than to propose a program of divorce reform.

A resolution not a part of the proposed law, but still an important action of the Congress was passed in the February session:

WHEREAS, The annual collection and publication of marriage and divorce statistics of the several states would materially aid in the study and solution of the divorce problem, and

Whereas, Only eleven of the states now provide for such collection and publication; therefore, be it

Resolved, That this Congress adopt a draft of a proposed general law for the annual collection and publication of such statistics, which law shall be reported by the Secretary of this

[1] *Report from the Pennsylvania Commission on Divorce*, p. 100.

[2] *Ibid.*, p. 10.

Congress to the Governors and respective delegates to this Congress of all the states and territories of the United States for submission to the legislatures thereof, with the object of securing as nearly as possible uniform statutes upon the subject.[1]

Perhaps no better statement of the occasion and motive of the Congress could be made than that contained in the opening paragraph of the address presented by the Committee on Resolutions:

The great and constantly increasing number of divorces in the United States has aroused a general public interest, which has resulted in a wide-spread movement for their restriction. As one result of the discussion of this subject, there is a well-founded belief that a part of this increase in divorces, attended with special evils and scandals, is due to the lack of a divorce law uniform throughout the nation.[2]

The action of this Congress is presented as a typical example of the effort at legal control.

That uniform divorce laws would be of incalculable benefit in many ways in dealing with the broken family is freely conceded. That the advantages accruing from such laws would compensate adequately for the effort which will be required to secure them is equally clear. But that uniform laws would result in a "restriction" of the "great and constantly increasing number of divorces" is scarcely demonstrated by the effects of the changes made in the laws of the several states in recent years, the great majority of which have been decidedly in the direction indicated as desirable by this Congress.[3]

[1] *Proceedings of The National Congress on Uniform Divorce Laws*, p. 222.

[2] *Report from the Pa. Commission on Divorce*, p. 89.

[3] *Cf.*, ch. vi.

CHAPTER VIII

American Ecclesiastical Legislation

Ecclesiastical legislation on the part of the Protestant Churches of America falls wholly within the period of our study. A résumé of the official action of several of the leading denominations as preserved in their permanent literature is interesting and significant. The churches, whose enactments on divorce are here reviewed, have been selected, both because they are representative of the whole Protestant Church, and because their legislation on the subject is more or less authoritative for their respective bodies.

A survey of these enactments will reveal the trend of ecclesiastical action in view of the phenomenon of the modern divorce movement.

THE PROTESTANT EPISCOPAL CHURCH IN THE UNITED STATES

Legislation on divorce began in 1868, when Canon 13, Title II, was adopted and made the law of the church. It follows:

> No minister of this church shall solemnize matrimony in any case where there is a divorced wife or husband of either party still living; but this Canon shall not be held to apply to the innocent party to a divorce obtained for the cause of adultery, or to parties once divorced seeking to be united again.[1]

At the second triennial convention following, in 1874, a

[1] *Journal of the General Convention*, 1863, House of Deputies, p. 130, House of Bishops, p. 253.

new canon was proposed and referred to the next convention, at which time it was adopted. The text follows:

§ I. If any persons be joined together otherwise than as God's Word doth allow, their marriage is not lawful.

§ II. No Minister, knowingly after due inquiry, shall solemnize the marriage of any person who has a divorced husband or wife still living, if such husband or wife has been put away for any cause arising after marriage; but this Canon shall not be held to apply to the innocent party to a divorce for the cause of adultery, or to parties once divorced seeking to be united again.

§ III. If any Minister of this Church shall have reasonable cause to doubt whether a person desirous of being admitted to Holy Baptism, or to Confirmation, or to Holy Communion, has been married otherwise than as the Word of God and the discipline of this Church allow, such Minister, before receiving such person to these ordinances, shall refer the case to the Bishop for his godly judgment thereupon: *Provided, however,* that no Minister shall, in any case, refuse the sacraments to a penitent person in imminent danger of death.[1]

In 1886 the House of Deputies passed the following resolutions:

Resolved, Toward restoration of American civilization, decaying already at its root, for the promotion of stability in Church and State, for the promotion of social purity and order, for the sake of natural good morals, in advancement of the glory of our Lord Christ, "Who is Head over all things to His Body, which is the Church", that this house will not abandon the subject of Marriage and Divorce until legislation upon it be effected in full accordance with the Law of God as set forth in Nature and revealed in the Word; and that it

[1] *Journal of the General Convention*, 1877. Adopted by the House of Deputies, p. 186. Approved by the House of Bishops, p. 197. Text, p. 126 of the Canon.

appoint a committee to consist of three Presbyters, and two Laymen, to sit during the next three years, take into consideration the whole subject, and report to the next General Convention as early as possible in its session.

Resolved, That, in view of the great evils connected with the subject of Divorce, and the importance of obtaining trustworthy information on the subject, a committee of this House be appointed to memorialize Congress on the subject of securing such information.[1]

Efforts were made at every General Convention from 1889 to 1901 to revise the Canon on Marriage and Divorce, but both Houses were not able to agree, and the matter was referred from one convention to another. At the General Convention held in San Francisco in 1901, however, the following significant resolution was adopted by the House of Deputies and ratified by the House of Bishops:

Resolved, That a joint commission be appointed, consisting of three Bishops, three Presbyters, and three Laymen, whose duty it shall be to confer with the official representatives of other religious bodies in the United States, with a view to establishing uniformity of practice on the subject of Holy Matrimony and Divorce.[2]

In 1904 the whole order of the Canons of the Church was rearranged. At the same convention both Houses agreed upon a revision of the Canon on Marriage and Divorce, which appears in the new arrangement as Canon 38, and is entitled, "Of the Solemnization of Matrimony". The text follows:

§ I. Ministers of the Church shall be careful to secure the observance of the law of the State governing the civil con-

[1] *Journal of the General Convention,* 1886, p. 313.

[2] *Ibid.,* 1901, House of Deputies, p. 296, House of Bishops, p. 136.

tract of marriage in the place where the service shall be performed.

§ II. [1] No Minister shall solemnize a marriage except in the presence of at least two witnesses.

[2] Every Minister shall without delay formally record in the proper register the name, age, and residence of each party. Such record shall be signed by the minister who solemnized the marriage, and, if practicable, by the married parties, and by at least two witnesses of the marriage.

§ III. No Minister, knowingly after due inquiry, shall solemnize the marriage of any person who has been or is the husband or wife of any other person then living, from whom he or she has been divorced for any cause arising after marriage. But this Canon shall not be held to apply to the innocent party in a divorce for adultery; *Provided,* that before the application for such marriage, a period of not less than one year shall have elapsed, after the granting of such divorce; and that satisfactory evidence touching the facts in the case, including a copy of the Court's Decree, and Record, if practicable, with proof that the defendant was personally served or appeared in the action, be laid before the Ecclesiastical Authority, and such Ecclesiastical Authority, having taken legal advice thereon, shall have declared in writing that in his judgment the case of the applicant conforms to the requirements of this Canon; and *Provided,* further, that it shall be within the discretion of any Minister to decline to solemnize any marriage.

§ IV. If any Minister of this Church shall have reasonable cause to doubt whether a person desirous of being admitted to Holy Baptism, or to Confirmation, or to Holy Communion, has been married otherwise than the Word of God and the discipline of this Church allow, such Minister, before receiving such person to these ordinances, shall refer the case to the Bishop for his godly judgment thereupon: *Provided, however,* that no Minister shall in any case, refuse these ordinances to a penitent person in imminent danger of death.[1]

[1] *Journal of the General Convention,* 1907, House of Bishops, p. 22, House of Deputies, p. 41. Text of the report, Appendix, viii, pp. 514-17.

THE PRESBYTERIAN CHURCH IN THE UNITED STATES

Since the framing of the Westminster Confession of Faith in 1643, it has contained the following statement in reference to divorce:

Although the corruption of man be such as is apt to study arguments, unduly to put asunder those whom God hath joined together in marriage; yet nothing but adultery, or such wilful desertion as can no way be remedied by the church or civil magistrate, is cause sufficient of dissolving the bond of marriage: wherein a public and orderly course of proceeding is to be observed; and the persons concerned in it, not left to their own wills and discretion in their own case.[1]

The first special action of the church was in 1872, when the following resolution was adopted by the General Assembly:

WHEREAS, Latitudinarian ideas on marriage and divorce are alarmingly prevalent at the present time, and, in some portions of the country, practically demoralizing,

Resolved, That this General Assembly enter its solemn protest against such loose opinions, and calls upon all its ministers to use their moral influence to create a more healthful sentiment in the community, and a thoroughly Scriptural practice in the Church.[2]

The next resolution was adopted in 1883, as follows:

WHEREAS, The preservation of the marriage relation, as an ordinance of God, is essential to social order, morality, and religion, and,

Whereas, That relation, in the popular mind, is shorn of its divine sanctions, to such an extent, that, not only are its

[1] *Confession of Faith,* ch. xxiv, sec. iii.

[2] *Minutes of the General Assembly,* 1872, pp. 73-4.

sacred bonds often sundered for insufficient reasons, but the action of the civil Courts, and the divorce laws in many of the States, are in direct contravention to the laws of God; therefore, be it

Resolved, That the General Assembly hereby bears testimony against this immorality, and earnestly advises the churches and Presbyteries under its care to make use of all proper measures to correct this widespread evil.[1]

In 1884 an overture was received asking that the phrase "or such wilful desertion as can in no way be remedied by the church or civil magistrate" as a cause for divorce be stricken out of chapter xxiv, section vi, of the Confession of Faith. The committee reported as follows:

As there is no evidence of a general desire for the proposed change, and as a compliance with the request would practically be for the Assembly to assume the initiative in the matter, the Committee recommends that no action be taken in the direction suggested by the overture; but that the Assembly at the same time, express its profound conviction that the Church should, by every means at its disposal, resist the growing laxity of legislative and judicial action in respect to divorce.[2]

Overtures of similar import were received in 1888, 1890 and 1902. The Assembly took no action in 1880, but in 1890 it recommended: "That the frequent and decided utterances of former Assemblies on this subject be deemed sufficient".[3] In 1902, having responded to the request of the Protestant Episcopal Church for a committee to confer with the committees of other churches in America on this subject, looking to some concerted action, it was decided that

[1] *Minutes of the General Assembly,* 1883, p. 689.

[2] *Ibid.,* 1884, p. 76.

[3] *Ibid.,* 1890, p. 129.

" it would not be desirable to take up the question of altering our own Constitution until this committee has reported." It was further

Resolved, That this General Assembly, viewing with sad apprehension the many perils to family life in our time, the growing ease and frequency of divorces upon grounds trivial and unscriptural, urges upon all our people the promotion of a wider reverence for the marriage bond; and requires all our ministers that they instruct their people in public and private of the sacredness of this divine institution, and that they exercise due diligence before the celebration of a marriage to ascertain that there exists no impediment thereto, as defined in our Confession of Faith.[1]

In 1903, after endorsing the report of the Special Committee on Divorce and Remarriage, the following resolutions were adopted:

Resolved, That this General Assembly favors every lawful endeavor to correct the evils of lax legislation regarding the subjects of divorce and remarriage, and to secure such uniformity of legislation thereon as may best promote the purity of society.

Resolved, That this General Assembly hereby enjoins all ministers under its care and authority to refuse to perform the marriage ceremony in the cases of divorced persons, except as such persons have been divorced upon grounds and for causes recognized as Scriptural in the Standards of the Presbyterian Church in the United States of America.[2]

The Committee on Marriage and Divorce reaffirmed, in 1904, the law relative to ministers marrying divorced per-

[1] *Minutes of the General Assembly,* 1902, pp. 125-6.

[2] *Ibid.,* 1903, p. 140.

sons and declared that the civil law was no excuse for the violation of the law of the church.[1]

No action of consequence was taken in 1905 and 1906.

The following resolutions were adopted in 1907 as the result of the report of the committee representing the Inter-Church Conference on Marriage and Divorce:

Resolved, 1. That this General Assembly rejoices in favorable results already reported and expresses the hope of more radical reform.

Resolved, 2. That this General Assembly hereby reaffirms the deliverances of former Assemblies regarding divorce and remarriage.

Resolved, 3. That Presbyteries are hereby enjoined to enforce the Standards of our Church, to hold to strict account all ministers under their care, and to urge all ministers to regard the comity that should refrain from giving the sanction of our Church to members of another church, whose marriage is in violation of the laws of the Church whose communion they have chosen.[2]

The General Assembly, in 1908, endorsed the report of the Committee on Marriage and Divorce, commended its work, and reaffirmed "all deliverances upon divorce and remarriage after divorce, adopted by previous General Assemblies".[3]

THE METHODIST EPISCOPAL CHURCH

Interest in the subject of divorce in the Methodist Church is manifested as early as 1860, when a resolution was presented with the view of bringing the matter to the attention of the General Conference:

Resolved, That a committee of five be appointed by the chair

[1] *Minutes of the General Assembly,* 1904, p. 73.

[2] *Ibid.,* 1907, p. 199.

[3] *Ibid.,* 1908, p. 167.

to take into consideration the subject of divorce, and report upon the same to this Conference.

This resolution was adopted,[1] and the committee reported as follows:

Resolved, That it is the sense of this General Conference that the marriage relation can only be dissolved by a violation of the seventh commandment, or by death: and, that a second marriage, contracted while a husband or wife is living, unless the former relation is dissolved for the above cause, is contrary to the teachings of the Holy Scriptures.[2]

The only action taken was to lay the report on the table and to order it printed. This was done by a vote of ninety-four to ninety-one.

The matter was introduced in a similar way in the General Conferences of 1868, 1876 and in 1880, but no action was taken. In the General Conference of 1884 the following definite resolution was adopted:

That no divorce shall be recognized as lawful by the Church except for adultery. And no minister shall solemnize a marriage in any case where there is a divorced wife or husband living; but this rule shall not apply to the innocent party in a divorce for the cause of adultery, nor to divorced parties seeking to be reunited in marriage.

And it further recommended, that this Conference invoke the Governments of the several States to appoint commissioners for the purpose of taking into consideration the enactment of uniform codes of divorce, and the reducing the number of causes therefor, to such grounds as may be justified by the Scriptures.[3]

[1] *Journal of the General Conference*, 1860, p. 34.

[2] *Daily Christian Advocate*, Buffalo, N. Y., May 23, 1860.

[3] *Journal of the General Conference*, 1884, p. 334.

The first part of this resolution appears as par. 46 of the Discipline (p. 33).

In 1888 a fruitless attempt was made to exclude divorced persons from the church. The memorial which failed of adoption follows:

Resolved, That rule 46, p. 33, of the Discipline be so amended as to prevent persons [who have secured divorces on frivolous grounds not warranted in the Word of God or the Discipline of our Church] from holding membership in our Church.[1]

Four memorials of similar import were presented in 1892, and another in 1896, none of which were taken up for action.

In the Conference of 1900 an effort was made to cut out from the Discipline the clause which limits divorce to one Scriptural cause. The memorial was ignored.

The Conference, in 1904, authorized a commission to act with the Inter-Church Conference on Marriage and Divorce, and,

Resolved, That we call special attention of all our ministers to our law contained in par. 39 of the Discipline, relating to marrying divorced persons, and earnestly insist upon the necessity for strict obedience to the law of our Church upon this matter.[2]

THE REFORMED CHURCH IN AMERICA

No action on the subject of divorce appears in the Minutes of the General Synod before the year 1898. At that time the Committee on National Affairs reported on the "Ray Bill", a proposed divorce law (House of Representatives, 5184), as follows:

[1] *Journal of the General Conference,* 1888, p. 231.

[2] *Ibid.,* 194, p. 397.

The Bill provides for a Divorce Law to be enacted for the District of Columbia and the Territories, conforming to the Laws of New York State, that absolute divorce shall be allowed only in case of adultery.

The Reformed Church has been consistent in upholding the sanctity of the marriage bond, and deprecating easy and promiscuous divorce, and would welcome a National Law prescribing uniform conditions of marriage and divorce. As a step toward this much needed end, which at present seems impracticable, the proposed measure appeals to your committee as worthy of the support of the Christian public.

Your committee offers the following resolution:

Resolved, That the stated clerk of the General Synod be authorized to affix his signature as our representative and in our name to petition the honorable Senate and House of Representatives of the United States, praying them to pass a bill to limit absolute divorce to cases of adultery, in the District of Columbia and the Territories.[1]

The report with the resolution was adopted.

The following resolution presented by the Committee of Public Morals in 1899 was adopted:

Resolved, That in view of the deplorable evils growing out of the existing methods for procuring easy divorce, prevalent in many States, and frequently resulting in the remarriage of guilty parties in divorce proceedings, the General Synod of the Reformed Church in America, takes this opportunity of declaring its uncompromising opposition to all such remarriages as opposed to the spirit and mind of Christ, and it enjoins the entire body of the Church, clerical and lay, to take no part in giving approval to such remarriages whether authorized by the State Law or not; but on the contrary to unceasingly cooperate in the work of developing a strong and healthy public sentiment which shall diminish if not suppress the evil

[1] *Minutes of the General Synod,* 1898, vol. xix, p. 256.

practice and correspondingly elevate the character of public and private morality.[1]

In 1903 a delegate was appointed to participate in the councils of the Inter-Church Conference on Marriage and Divorce.[2]

At this same Synod a preamble and resolutions were presented and referred to a special committee:

WHEREAS, The teaching of our Lord and Saviour, Jesus Christ, the Head of the Church, clearly affirms that the bond of marriage cannot be dissolved excepting by death or through unfaithfulness of one of the parties to the marriage vow; and,

Whereas, The laxness of divorce and the remarriage of divorced persons is an evil of growing proportions, and of most serious menace to our Christian civilization; therefore,

Resolved, That the General Synod hereby enjoins upon the Ministers of the Reformed Church not to remarry divorced persons, excepting the innocent party to a divorce obtained for the cause of adultery.[3]

The special committee reported at the next General Synod, recommending the adoption of the resolution. The committee's report was adopted.[4]

Upon the report of the Committee of the Inter-Church Conference on Marriage and Divorce, in 1905, the Synod took action as follows:

Resolved, That the General Synod R. C. A. in compliance with the recommendation of the "Inter-Church Conference on Marriage and Divorce," hereby earnestly enjoins all Min-

[1] *Minutes of the General Synod,* 1899, vol. xix, pp. 502-3.

[2] *Ibid.,* 1903, vol. xx, pp. 396-7.

[3] *Ibid.,* 1903, vol. xx, p. 466.

[4] *Ibid.,* 1904, vol. xx, pp. 777-9.

isters under its care and authority to refuse to marry any divorced person, except the innocent party in a case where the divorce has been granted on Scriptural grounds: nor then until assured that a period of one year has elapsed from the date of the decision allowing the divorce.

Resolved, That we heartily approve the "Act" recommended by the American Bar Association of 1900, seeking a uniform and radical reform in the Divorce Laws throughout the United States; urging, however, the amendment of the sixth section of the "Act" so as to provide that if action is to be taken on the subject of remarriage the innocent party shall not marry again within a year from the date of the decision allowing divorce; and that a just discrimination shall be made between the innocent and guilty party.

It was resolved further, that the Synod should continue its coöperation with the Inter-Church Conference on Marriage and Divorce.[1]

The only additional action was in 1906, when the General Synod endorsed the report of the Public Morals Committee of the Inter-Church Conference on Marriage and Divorce.[2]

GENERAL SYNOD OF THE EVANGELICAL LUTHERAN CHURCH IN THE UNITED STATES OF AMERICA

The first action of this Church was taken as the result of a memorial presented by the Hartwick Synod:

WHEREAS, We believe that it is advisable for our churches to have a clear and explicit law for guidance and government of her ministry and laity in the matter of solemnizing the marriage of persons, one or both of whom have been divorced; therefore,

Resolved, That we petition the next General Synod to take

[1] *Minutes of the General Synod*, 1905, vol. xxi, pp. 218-19.

[2] *Ibid.*, 1906, vol. xxi, pp. 535-8.

some definite action in this direction, either by an amendment to her Formula of Government and Discipline, said amendment to be ratified by the several Synods comprising the General Synod, or by suggesting a uniform law which may be adopted by such Synods as desire to legislate upon this subject.[1]

The Committee on Minutes of the District Synods recommended the following action which was adopted:

Inasmuch as action should not be hastily taken on a subject of such importance as divorce, affecting the future stability of the home, the Church, and the State, we would recommend that a committee of five be appointed to consider this matter carefully, and report, at the next meeting of the General Synod, either an amendment to our Formula of Government and Discipline, or such a law for the government of all our ministers regarding the marriage of divorced persons; said amendment to be submitted to the Synods comprising the General Synod for their approval or rejection.[2]

At the same Synod a Committee on Uniformity of Divorce Laws was appointed (p. 252).

Following is the report of the committee in the General Synod of 1907 on the Hartwick memorial:

1. Our Lutheran theologians, from the Reformation times down to the present day, with scarcely an exception, have recognized two scriptural grounds of divorce, namely, adultery [Matt. v. 32 and Matt. xix. 5-9] and wilful or malicious desertion [1 Cor. vii. 15].

2. Many of our theologians have also recognized other legitimate causes for divorce, such as impotence, extreme cruelty, conspiracy against life, and habitual drunkenness, on

[1] *Minutes of the Hartwick Synod*, 1905, p. 21.

[2] *Proceedings of the General Synod*, 1905, p. 12.

the ground that these causes really invalidate the marriage bond, and are therefore involved, or included, in the principles underlying the teaching of the Scriptures already referred to.

3. Our theologians have also uniformly granted to the innocent party to a divorce on these Scriptural grounds the right of remarriage.

Your committee is of the opinion that this teaching of our theologians is both Scriptural and safe; that it fully guards the sanctity of the marriage relation and the welfare of the family on the one hand, and also, on the other hand, protects the rights of the innocent and the wronged.

Your committee does not deem it wise to propose an amendment to the Formula of Government and Discipline on this subject, but they recommend the adoption of the following action:

Resolved, That the General Synod recommends to all the District Synods connected with it that, for the guidance of their ministers, they make and establish this rule, that no minister should perform the marriage ceremony for a divorced person whose divorced husband or wife is still living, except the innocent party to a divorce granted on Scriptural grounds, namely, adultery or wilful or malicious desertion, or such extreme cruelty as may be included under the same principle, and then only after the lapse of a period of twelve months after the divorce has been granted; and that, for their information as to the facts in the case, they may, with a good conscience, accept the statements made in the license granted by the State, or in such other legal documents as may be presented to them by the parties applying for marriage. The report was adopted.[1]

The Committee on Uniformity of Divorce Laws reviewed the proceedings of the Divorce Congress held in Washington in February and November, 1906, but made no recommendations.[2]

[1] *Proceedings of the General Synod,* 1907, pp. 63-4.

[2] *Ibid.,* pp. 04-5.

THE CONGREGATIONAL CHURCHES IN THE UNITED STATES

No action was taken by this church prior to 1880, when the following minute was adopted:

The National Council of the Congregational Churches of the United States hereby put on record their deep concern at the alarming increase of divorce throughout the land. Believing that marriage is an institution intended of God to be as permanent as the life of the parties who enter upon it, we deplore the dissolution of its bonds by human authority, except for the one cause sanctioned by the Saviour. We invite the renewed attention of both ministers and churches to the sanctity of this institution, and urge them to do what lies in their power to put an end to the present widespread and corrupting practice of divorce for causes which find no sanction in the Word of God.[1]

The following resolution on divorce was adopted in 1883:

This Council, having at its last session expressed its deep concern at the alarming increase of divorce throughout the land, deplored the dissolution of the bonds of marriage except for the one cause mentioned by our Saviour, and commended the then existing evils growing in the state from this source to the urgent and prayerful attention of the good, now earnestly reiterates its convictions then uttered, and warmly commends as doing an admirable work in this matter the New England Divorce Reform League and the labors of the Rev. Samuel W. Dike, its secretary.[2]

In the National Council of 1886 former resolutions were reaffirmed and a resolution adopted urging upon Congress and the several states and territories the importance of the collection and publication of statistics on the subject.[3]

[1] *Minutes of the National Council*, 1880, pp. 31-2.
[2] *Ibid.*, 1883, p. 29.
[3] *Ibid.*, 1886, pp. 26, 37, 40.

In 1889 the records show the following action:

The National Council of Congregational Churches again calls attention to the great and increasing number of divorces granted in the United States, which are now officially shown to have increased in the last twenty years more than twice as fast as the population, and also to those other evils that directly affect the family in its constitution, purity, and proper fruitfulness.

Resolved, That we invite the careful study of the forthcoming report to Congress of the Commissioners of Labor on marriage and divorce in the United States and Europe, and urge that this be done with two ends in view: first, that wise reformatory legislation may follow; and second, that the proper religious and social influences may be applied at the source of the evils that threaten our family life.[1]

A committee was appointed in 1895 to report at the next National Council its judgment as to the correct Scriptural doctrine of divorce.[2]

The essential features of the report were:

The divorce treated in this report is divorce *a vinculo matrimonii*—divorce from the bond of matrimony—or such divorce as permits one by law to put away husband or wife, and be married to another person.

I am of the opinion that there is no existing Scripture doctrine of divorce other than that stated by the Saviour in Matt. xix. 1-9.[3]

This report was accepted, and in addition a minority report was also accepted which among other suggestions, contained the following:

I would respecftully suggest a single further practical step.

[1] *Minutes of the National Council*, 1889, p. 47.

[2] *Ibid.*, 1895, p. 41. [3] *Ibid.*, 1898, p. 280.

It is that our pastors be invited to follow, so far as they can, some principle of Christian comity in acting upon applications for the celebration of the marriage of persons who could not be married under the rules of the Church to which they belong, and therefore apply to our ministers for the service.[1]

The following appears in the Minutes of 1901:

1. We view with serious misgivings the alarming increase in divorces and the consequent deplorable result in domestic and social life.

We regard the purity and unity of the family as corner-stones of Christian homes and Christian civilization.

2. We do not question the propriety of solemnizing the marriage of a party who has been shown to be innocent in divorce proceedings, but we urge upon the ministers the duty of withholding sanction from those whose divorce has been secured on other than Scriptural grounds.[2]

In 1907, after endorsing the Inter-Church Conference on Marriage and Divorce, the following action is recorded:

We express our detestation for frivolous divorce, and we urge our ministers to make strict inquiry, in the case of strangers or of divorced persons applying to them for marriage, to discern whether, under the laws of morality and charity, they are worthy of entering again into that relation from which they may once have been severed.[3]

INTER-CHURCH CONFERENCE ON MARRIAGE AND DIVORCE

As a result of the initiative taken by the Protestant Episcopal Church in 1901, the Inter-Church Conference on Mar-

[1] *Minutes of the National Council*, 1898, pp. 282.

[2] *Ibid.*, 1901, p. 39.

[3] *Ibid.*, 1907, p. 403.

riage and Divorce was called in January of 1903. Three churches responded to the call, namely, the Protestant Episcopal, the Methodist Episcopal, and the Presbyterian Church in the United States. A permanent organization was affected, but on account of the limited representation of churches the following resolution was the only action taken:

WHEREAS, This Conference deems it inexpedient to take definite action on the general subject before it, until a larger representation is secured from the different churches of the country; therefore,

Resolved, That the Executive Committee communicate, in its discretion, with the Christian churches not yet represented in the Conference, with a view of securing the appointment of representatives.[1]

At the next meeting held in November of the same year, nine churches were represented. Besides those represented in the first meeting, there were delegates from the Alliance of the Reformed Churches holding the Presbyterian system, the General Synod of the Evangelical Lutheran Church, the Baptist Churches, the Congregational Churches, the Unitarian Churches, and the Reformed Presbyterian Church, General Synod.

At this conference the following resolutions bearing directly on our subject were adopted:

Resolved, That as a step towards greater carefulness in the matter of remarriage after divorce, the several churches are earnestly urged to take such action as commends itself to their judgment and lies within their power to enforce upon ministers and members, through the discipline of each church.

Resolved, That the Executive Committee take into consid-

[1] *Documents of the Interchurch Conference on Marriage and Divorce,* p. 6.

eration the question as to what practical methods can be devised to educate the public conscience with a view to securing the objects of the Conference.[1]

At a third conference held in March, 1904, ten churches being represented, resolutions as follows were adopted:

Resolved, That in recognition of the comity which should exist between Christian churches, it is desirable, and would tend to the increase of the spirit of Christian unity, for each church represented in the Conference to advise and, if ecclesiastical authority will allow, to enjoin its ministers to refuse to unite in marriage any person or persons whose marriage, such ministers have good reason to believe, is forbidden by the laws of the church in which either party seeking to be married holds membership. [2]

Following are two resolutions adopted at the suggestion of the Committee on National and State Legislation:

Resolved, 1. That the report of the Committee on National and State Legislation be recommitted to the committee for further inquiry, and for suggestions as to the best methods of securing such uniformity of law and usage among the churches as may tend to secure legislative harmony.

Resolved, 2. That the Executive Committee be authorized to prepare and issue, in their discretion, a declaration and appeal to the public as to the sanctity of marriage and the grave dangers of existing laxity through the frequency of divorce.

The Executive Committee was directed to take into consideration some plan for local organization among the clergy, with a view of securing uniformity of action on marriage and divorce.[3]

[1] *Op. cit.*, p. 10.

[2] *Ibid.*, p. 13.

[3] *Ibid.*, p. 13.

From the digest of the action of the churches, and of the Inter-Church Conference on Marriage and Divorce here presented, it is apparent, that, with the growing frequency of divorce, the churches have become increasingly active on this subject, and that there has been a constant tendency to stringency in ecclesiastical enactments. The churches have sought to oppose the tendencies revealed in the rising divorce rate by increasing the restraints of ecclesiastical control.

That some influence has been exerted by this action, especially among the members of the several communions, is not questioned, but the inefficiency of the churches to check the tide of divorce is demonstrated by the accelerated velocity of the divorce increase during the very period of their increased effort at its suppression.

CHAPTER IX

Causes of Increase

PERSISTENCE OF THE INCREASE

The forces tending to counteract divorce are among the most efficient elements of social control. Laws have been enacted in every State in the Union for the purpose of regulating divorces, ranging in strictness from the recognition of fourteen valid grounds in New Hampshire, to absolute prohibition in South Carolina. While the laws in the several states differ in respect to the causes for divorce, they agree in their restrictive purpose. Juristic interpretation has required a more strict conformity to the law. Ecclesiastical divorce legislation in the great Protestant bodies, a product of the period we are studying, has increased in stringency with the rise of the divorce rate. The persistent protest of the Protestant clergy, even where no ecclesiastical enactment requires it, is expressed in their refusal, in most instances to marry divorced persons unless it should be the innocent party to a decree obtained on "Scriptural grounds." The doctrine of indissolubility still holds in the Roman Catholic Church. Public opinion expresses its disapproval chiefly through the press and by means of voluntary associations for the suppression of the "divorce evil."

A situation of a most interesting nature now confronts us. Despite all these counter influences the rise of the divorce rate is persistent and rapid. This fact, it would seem, is equivalent to a demonstration that the family, like every

other social institution, is subject to forces resident within society which do not depend for their operation upon human laws and are not subject to control by artificial means or external authority, but which operate by a law of their own nature and compel the readjustment of ideals in harmony with their own development.

This is apparent in the fact that divorce is the result and not the cause of the break-up of the family. In an increasing number of instances marital relations have ceased to exist between persons legally united. Mutual affection and free choice, essential elements of valid marriage, are absent. Every tie upon which the law, ecclesiastical and civil, placed its sanction is severed. The husband and wife are estranged. This often leads to separation. If there are children they go to live, as a rule, either with one of the parents or with some other relative. Only occasionally do they become wards of the state. The family in these cases has no longer any actual, but only a legal existence.

Wherever this condition has prevailed the parties have sought release from the only remaining bond, the legal one, and they employ whatever means the law itself has made necessary to that end. Divorce is therefore the legal act by which the legal bond is dissolved, when every other reason for the continuance of the marriage relation has disappeared.

From this point of view it is clear that the study of divorce statistics can only be of service in indicating imperfectly the degree of disaffection in the family life. Legal divorce can never be more than an approximate index to the actual divorce in a population. The more stringent the law the less likely are the figures to conform to the actual number of estrangements and separations, or to indicate the degree of unfaithfulness to the marriage bond.

THE NATURE OF THE CAUSES

For obvious reasons the analysis of the legal causes of divorce is of little value in the effort to explain the rising rate. In the first place, the legal causes have undergone relatively slight modifications during the last forty years.[1] There is little perceptible correlation between statute enactments and the increase of divorces. As a matter of fact, few new causes have been added, and these in only a few states, while there has been a decided tendency toward stringency in respect to residence requirements in the states in which divorce is sought and in the prohibition of remarriage until after a certain period has elapsed from the granting of the decree. In the second place, it is clear that the legal causes are frequently not the real reasons for securing divorce. Regardless of what the statutes are, persons whose marital relations have become intolerable, have ultimately found a way of release from them. Where divorce is forbidden, recourse is often had to annulment on some technical ground and the decree of nullity becomes the practical equivalent of divorce proper. This is well exhibited by medieval practices in which the prohibited degrees of relationship as prescribed by canon law provided ample means of escape. Lecky cites a case from Coke " in which a marriage was pronounced null because the husband had stood god-father to the cousin of his wife." [2] The matrimonial adventures of Napoleon and Josephine and also those of Margaret Tudor, daughter of Henry the VII, are glaring illustrations of the evasions of the law.[3] Those less scrupulous, who have lacked either the disposition or the means

[1] *Cf. supra.*, ch. vi.

[2] *Democracy and Liberty*, vol. ii, p. 194.

[3] *Ibid.*, vol. ii, p. 194.

to evade the law, have resorted to new and clandestine relations.

Where statutory provision is made for divorce either the necessary or the most feasible cause is utilized. Ample illustration of this truth is to be found in the fact that, while almost 60 per cent of all divorces in the United States in forty years were granted on the grounds of cruelty and desertion, in New York State all are granted for adultery. The citizens of New York are not necessarily more immoral than those of other states, unless compelled to be, either actually or confessedly, in order to secure legal separation from the marriage contract. The explanation of the fact is, that adultery is the only legal cause for divorce in New York. Chancellor Kent, after a long career on the bench of New York, stated that he believed that sometimes adultery was committed for the very purpose of obtaining a divorce, because it could be secured on no other ground.[1] The same philosophy applies to the case of South Carolina. It would be absurd to suppose that the State is free from domestic discord and all sexual immorality simply because no divorces are granted. Divorces are prohibited in South Carolina. But we are not left to our theory as to the facts.

South Carolina has found it necessary to regulate by law the proportion of his property which a married man may give to the woman with whom he has been living in violation of the law. As late as 1899, the courts were called upon to apply this law in order to protect the rights of the wedded wife and her children, in a case in which it appeared that both the husband and the wife had been living in adultery since the separation.[2]

[1] Judge Stevens, *The Outlook*, June 8, '07, p. 288.

[2] *Ibid.*, p. 288-9.

It is clear that the reason for the increased resort to statutory grounds for divorce is to be found in the fact that an increasing number of married persons are becoming dissatisfied with their married life, and are seeking release from the marriage contract. What are the causes producing this condition? What are the disturbing elements that are increasing the number of persons subject to domestic infelicity and incompatibility which, in turn, increase the probability of adultery, bigamy, crime, cruelty, desertion, and drunkenness? Divorce is but the product of the underlying social conditions which are inherent in our modern society. These causes are not necessarily "social evils" as many writers suppose. Many of them are due to changes in the social environment, and in the end will prove beneficial, although the effects arising in the period of readjustment may seem for the time disastrous.

It is on this most important phase of the subject that the least study has thus far been expended. For the most part, thinkers and writers have started with the assumption that the family, as we know it, is the final form, that it is ideal, and that any forces which tend to modify it, or conform it to different ideals, are destructive and evil. Mistaking the effect for the cause, and without adequate apprehension of the nature of the social forces which are producing changed conditions throughout our whole social fabric, many have looked upon the spread of divorce as an unmitigated evil and have sought to regulate the divorce movement by more stringent and uniform divorce laws. This is to treat the symptoms rather than the disease. This method of procedure will produce many good results, but its futility in respect to its influence upon the divorce rate needs no further demonstration than a clear apprehension of the causes involved.

Professor Willcox, in his able treatise on *The Divorce*

Problem, a Study in Statistics, has made a most valuable contribution to the literature of the subject, although he betrays, both in his title and in his treatment, the influence of the current method of viewing the subject. He shows conclusively the inefficiency of the legal method of regulating divorce; that there is no necessary correlation between legal causes and the rate; that changes in the law are not followed by corresponding changes in the rate; "that the influence of the law, if not nil, is at least much less than commonly supposed". He closes his argument with the following paragraph:

> The conclusion of the whole matter is that law can do little. Agitation for change of law may educate public opinion. It may even be the most efficient means of education. Such effects no statistics can measure, and, therefore, in a paper like this, the educative influence of law must be neglected, but the immediate, direct and measurable influence of legislation is subsidiary, unimportant, almost imperceptible.[1]

The logical result of this view is the clear perception that the real causes of divorce are to be sought, not in statute enactments, but in the nature of social conditions. From the point of view of our investigation, this is Professor Willcox's most original and valuable contribution. He presents nine causes for divorce, all of which lie within the scope of the social environment. These causes are "appended as statistical inductions". "Some are hardly more than hypotheses to be verified, modified or retracted on further investigation; others, perhaps, may rank as probabilities; but all alike are offered merely as suggestions."[2] The modesty with which these causes are presented is probably due somewhat to the consciousness of the fact that

[1] P. 41 *et seq.* [2] *Ibid.*, p. 62.

they are not an essential part of "A Study in Statistics," but are submitted as necessary in the search for the "Remedy" of divorce viewed as a "Problem". This modesty, and the absence of any attempt at classification or critical analysis of the causes, must not be permitted to obscure the value of the "suggestion". He has not only indicated the direction in which we must look in order to find the causes of divorce, but has said, as well, the foundation for the explanation of the rising rate.

A brief analysis of the causes treated with reference to their bearing on our problem will be suggestive.[1] Four causes, (2) "The Popularization of Law," (5) "The Emancipation of Women," (7) "The Increase of Industrialism," (8) "The Spread of Discontent," are chiefly identified with the expanding divorce rate. All these with the exception of the first are chiefly aspects of the economic phase of the subject. (1) "Two Conceptions of Marriage Law," and (9) "Two Conceptions of the Family," are evidently causes of divorce, but since they have been in vogue since the beginning of the Protestant Reformation, some reason outside the ideas themselves must be given for the sudden increase of their activity contributing to a rapidly-rising rate. It is possible that social and economic changes provide this explanation. It would be difficult to show that (3) "Laxity in Changing and Administering the Law" at the present time is greater than formerly. Prompt legislative action in response to urgent needs is characteristic of modern legislatures, and a reactionary public sentiment has tended rather to influence a strict interpretation and enforcement of the law. It is by no means established that early marriages are freest from divorce. On the contrary, many conclude that later marriages are

[1] P. 62, *et seq.*

more lasting, in which case our increased (4) "Age of Marriage" would tend to decrease the rate of divorce. (6) "The Growth of Cities" is not a factor of great importance, since the last report shows a rate of increase in rural districts, if not equaling at least approximating that of the urban.[1]

From this hasty review it will be seen that while the causes here assigned are for the most part valid, as far as they go, they fall short of an adequate explanation of the phenomena of the modern divorce movement.

Professor Howard, seeking for the causes of the divorce movement, inquires:

> But do not "bad marriages" really go to the heart of the problem? Marriages, not legally, but sociologically bad, are meant. They include frivolous, mercenary, ignorant, and physiologically vicious unions. They embrace all that would be forbidden by Francis Galton's science of Eugenics; all that might in part be prevented by a right system of education. Indeed, bad marriages are the cause of the clash of ideals referred to. At present men and more frequently women enter into wedlock ignorantly, or with a vague or low ideal of its true meaning. The higher ideal of right connubial life, of spiritual connubial life, often comes after the ceremony. It is *ex post facto;* and it is forced upon the aggrieved by suffering, cruelty, lack of compatibility, "prostitution within the marriage bond." An adequate system of social and sex education would tend to establish such ideals before the ceremony. "An ounce of prevention is worth a pound of cure."[2]

We are not disposed in the least degree to question the validity of "bad marriages" as a cause of divorce. Professor Howard has laid rightly great emphasis here. We

[1] *Cf. supra*, ch. v.

[2] *Publications of the American Sociological Society*, vol. iii, p. 179.

should be willing to include legally as well as sociologically bad marriages as a cause of many divorces. It is only as an interpretation of the rapid increase of the divorce movement that we think Professor Howard's explanation does not "go to the heart of the problem". Is it here, in fact, not putting effect for cause? It is difficult to believe that sociologically vicious unions are more numerous than formerly, and if they are, there must be some cause for the phenomenon. Is it not a fact, rather, that the "mighty forces of spiritual liberation" are simply revealing more and more the presence of such unions? Is it not true that the pressure due to changes in the social environment is operating to render sociologically bad marriages unendurable, whereas under former conditions they were not discovered to be bad, and even to make it more difficult for sociologically good marriages to survive?

If our study, therefore, is to possess any scientific value it must go deeper into the problem of social causation. We must inquire into the great economic, social and religious movements which, since the civil war, have wrought such profound changes throughout the whole structure of our American life, in order to ascertain their influence upon the divorce rate. It is in such a study, and there alone, that we shall find the causes that lie back of our divorce movement; that render the increasing resort to the divorce courts one of the most interesting and important facts of our social situation.

CHAPTER X

Economic Development

THE PROBLEM OF ADJUSTMENT TO ENVIRONMENT

The subject we are considering belongs to the category, not of physical, but of social science. Society enjoys no exemption from the law of survival. It must adapt itself to its physical and organic environment or perish. This is as true of any social institution as it is of society itself. Hence not only in our method but also in our material we are kept close to the real world. The roots of social causation lie deep in the soil of physical processes. We have not reached ultimate analysis when we say that "every society displays phenomena that are ascribable to the characters of its units and to the conditions under which they exist." [1] Each of the facts is reducible to lower terms, for not any of them are uncaused causes. There still remains the question as to the physical causes which conditioned the "units", and the factors which produced the "conditions", which are active at any given time.

Perception of the necessary adaptation of society to environment forbids consideration of any social fact or institution apart from the physical facts upon which it rests. Whatever other factors enter into the problem, and there are many, the physical environment within which a society exists, exerts constantly a pressure, which, to a greater or

[1] Spencer, *Principles of Sociology*, vol. i, pp. 8-9.

less extent, determines its form, character and organization. If this pressure is constant and uniform the adjustment is comparatively simple. But just here lies one of our chief difficulties. In the interpretation of social phenomena our problem is rendered exceedingly complicated because of the fact that the physical environment is not static but is dynamic, undergoing constant evolution. To attempt to present an exhaustive study of the bearings of the various phases of a constantly changing environment upon a developing institution is a difficult feat in social dynamics. Before any such study can be completed it will be out of date. It is possible, however, to detect primary elements and to indicate their chief bearing upon a given topic. In this spirit and with full consciousness of our limitations we may proceed to point out the influence of changing economic conditions upon divorce.

The economic interpretation of history has done much to give sanity to the conclusions of social theorists. It has shown the futility of attempting the explanation of society on an idealistic or theological basis. It has rendered any interpretation of society as merely volitional impossible. Things happen and men forever after think and act differently. No one to-day questions the ability of any man to will as he chooses, but to any one schooled in modern ways of thinking, it is certain that there are conditions which cause him to choose to will as he does. And it is just these "conditions" which arise out of the ceaseless struggle for existence that are so potent in shaping individual and collective action.

At every stage of human progress the pressure of population upon the means of subsistence has modified, often conditioned, results. Whatever the stage of culture, first of all man must live, and achievements bear a direct ratio to the amount of surplus energy left after the securing of the food

supply. Wherever food has been relatively abundant and easily accessible, social progress has been comparatively rapid. According to Morgan: "The great epochs of human progress have been identified more or less directly with the enlargement of the sources of subsistence." [1]

Approaching the subject from one angle some economic writers have been so enamored of this view that they have offered it as the sole determining cause in all human experience. They have applied it not only to all phases of social development, but to philosophy and religion as well. Extreme positions have caused unnecessary criticism and delayed the general acceptance of the basic truths involved, but they have not obscured the ultimate value of a theory and method of interpretation which have been of incalculable value to science in other realms, and which promise no lesser returns for painstaking labors in this.[2]

In advocating this method of investigation in the realm of social science we are not proposing a materialistic basis for society, but merely pleading for the application of the scientific method of modern scholarship to the facts of human experience. Psychological and social elements are certainly not to be neglected, but no interpretation of any form of human relation or institution which omits economic elements can be either accurate or complete.

Of the greatest possible significance, therefore, in the study of our subject is the great industrial revolution of the nineteenth century. The rise of invention, with the consequent introduction of machinery into the field of economic production, has resulted in radical changes throughout the whole industrial world. Existing industries have been completely transformed and many new ones have been created.

[1] *Ancient Society*, p. 19.

[2] *Cf.* Seligman, *Economic Interpretation of History*.

The substitution of mechanical for physical power has caused the rearrangement of the forces of production and the redistribution of population. It has built the modern industrial city. The increased productivity of labor and capital has made possible the rapid accumulation of wealth. These revolutionary changes in economic conditions have complicated every form of social activity and created a multitude of new problems which men of this generation have neither the experience nor the skill to solve.

While this great transformation began in the latter part of the nineteenth century, and while its effects are easily traced through the early history of the Republic, its chief consequences are to be observed in the rapid increase of material prosperity since the Civil War. Within this period the most marvelous development of material resources has taken place. The Homestead Act, and the chartering of the Union Pacific Railroad Company in 1862, opened the West for its unprecedented development. The new impetus to all enterprises resulted in increasing many fold our agricultural and mineral products, while the application of science and invention to manufacture has produced still more phenomenal results. Rapid technical progress has been supplemented by increased efficiency in the organization of industry, with the result that wealth has increased at a rate hitherto unknown.

Now it was inevitable that such deep and fundamental changes in the whole industrial basis of society should be accompanied by transformations in the social order. Social institutions could no more remain uneffected by this changed economic environment, than the physical organism in a changed physical environment. Readjustments are therefore to be expected. With the change in the material basis of existence, the functions of social institutions change, and as in biology, change of function is invariably followed by

change in form. The nature and the rapidity of this change depend upon the character of the institution, its facility of adaptation, and the influence of other agencies in accelerating or retarding its readjustment.

In turning now from our theorizing to the concrete facts, we perceive, at once, that the period of the most rapid modern industrial development in the United States practically coincides with the period of the rapid increase of the divorce rate. This phenomenon is sufficient to furnish a presumption in favor of a close correlation, if not the more positive relation, of cause and effect. It is therefore our purpose to examine a few of the chief results of the modern economic movement in order to ascertain their effects upon the institution of the family. This will take us as far into the field of economic changes as our specific task requires.

THE STRESS OF MODERN ECONOMIC LIFE

One of the most significant results of our modern economic progress is the increasing strain it lays upon the individual through the maladjustments which it inevitably creates. While economic progress ultimately means the increased well-being of society, it intensifies the selective process by which it is attained, and social wreckage strews the path of advance. This is illustrated in the phenomena of increasing insanity, suicide and crime. These bear a direct ratio to the degree of civilization attained. They are the social costs of progress and the higher the rate of progress the greater is the burden upon society that these costs impose. The more rapid the advance of the army the more numerous are the men who fall out of the ranks. In his book on *Suicide, An Essay on Comparative Moral Statistics*, Morselli gives a very graphic paragraph illustrative of this fact. He says:

The relation between the number of suicides and the general economical conditions is demonstrated by the continuous growth of the former in the century which beyond all others has witnessed the development of commercial relations and the perfecting of the industrial arts by science. It seems almost as if the character of an epoch is reflected in the character of that phenomenon of our social life, namely, the increase of psychological relations; nay, this reflection is such, that by the variable average alone, either of the mad or suicides, or of criminals, the economical well-being of a year or of a country can be determined.[1]

Unfortunately the waste products of an advancing civilization have often been mistaken for the signs of social deterioration and remedial measures have often hindered a process they were designed to help. Not until society has reached that utopian condition in which men shall find that perfect adjustment to his physical and social environment in which all friction shall disappear will the struggle cease to claim its victims.

In this connection the thoughtful investigator will not be at all surprised to discover that precisely the same phenomena are exhibited in the divorce rates which are found in insanity, suicide and crime. The number of divorces has steadily risen with the increase of progress and the growth of civilization, and Morselli might have included divorce among his indices of general prosperity. The assumption that all these allied phenomena are attributable to the same causes is amply justified by observation. Conditions of life which strain the mental and nervous constitution to the breaking-point are destined, in multiplied instances, to result in discord within the domestic circle, and thus increase the probabilities of divorce.

[1] *Suicide*, p. 152.

MODERN STANDARDS OF LIVING

Increased cost of living has subjected domestic institutions to another strain that is ever more burdensome. This is due, in part, to the greater cost of the necessary articles of consumption and the necessity of purchasing many things formerly produced within the family itself, but much more in the number and nature of the increasing wants of the modern family. The multiplication of wants has far exceeded the growth of incomes. Luxuries in the way of food, clothing, dwelling and home comforts of a generation ago have become necessities of the present. This is quite as true in the country as in the city, and applies in the main to the middle classes. The pressure of modern competition is felt not only within the circle of industry and commerce, but also in the realm of household economy, and it is a question where its results are more disastrous when it exceeds wholesome limits. The struggle to maintain a certain standard of living is not due only nor chiefly to the comfort and convenience secured. The chief incentive is to be found in that pride of self-aggrandizement which seeks to outclass others in the same social scale. Appearances outweigh comforts. The desire to excel becomes the ruling passion in countless homes among the middle and well-to-do classes and expenditures are indulged in for the sake of gratifications that do not minister to the peace and happiness of home life. These are often quite beyond the legitimate and available means of the family and entail anxiety and often hardship. Thus ostentation is esteemed of greater consequence than domestic happiness and the price paid for the former is often the sacrifice of the latter.

All these things increase the burden of the family maintenance without adequate compensation. It overtaxes the ingenuity of the husband and wife to keep the expenditures

within the income. It is failure here, not to gain the needed subsistence, but to maintain a certain standard, that is one of the most prolific sources of suicide and insanity. Bank failures and falling stock markets do not ordinarily mean want. They mean loss of social standing. It is these conditions which exhibit increasing suicide, insanity and crime that often lead to the disruption of otherwise peaceful domestic relations. They exaggerate individual eccentricities and reveal defects which might not otherwise come to view. If they do not actually create friction, which they frequently do, they create conditions through over-wrought nerves and irritable dispositions, favorable to the growth of infelicity and estrangement within the marriage bond.

PRESSURE OF MODERN ECONOMIC LIFE UPON THE HOME

A condition of serious importance is the crowding of modern business upon the precincts of the home. This applies chiefly to the homes of the laboring classes. The centralization of industry in factory production has produced a congestion of population in manufacturing centers. People are forced to live in tenements and flats in crowded conditions without sufficient fresh air and sunshine, under circumstances not conducive to health, happiness or good morals. Home life under such conditions cannot be ideal. The feeling of permanence is absent in the rented flat. Where the wife and the children, as soon as they are old enough, must seek employment in order to supplement the family income to the point of subsistence, the competence is secured at the sacrifice of home comforts. The "family residence" becomes little more than a place for eating and sleeping, and its unity and its value as a social institution are greatly impaired. The situation is not improved if the work is brought into the homes and the family abodes turned

into a sweat-shop. In countless instances the family endures this test, but it renders the probabilities less and less.

Where married women, through hard necessity, have been compelled to follow their work to the school, the shop, and the factory, their removal from the home during working hours is a serious menace. Nervous and physical exhaustion renders them unfit for the duties of wife and mother. August Bebel draws a picture of such a home:

Both husband and wife go to work. The children are left to themselves or to the care of older brothers and sisters, who themselves need care and education. At the noon hour the luncheon is eaten in a great hurry, provided that the parents have at all time to hasten home, which in thousands of cases is not possible on account of the shortness of the recess and the distance of the place of work from home. Weary and exhausted they return home at night. Instead of a friendly and agreeable habitation, they find a small, unhealthful dwelling, often devoid of light and air and most of the necessary comforts. The increasing tenement-house problem with the revolting improprieties that grow therefrom, constitutes one of the darkest sides of our social order which leads to countless evils, to vices and crimes. And the tenement-house problem in all the cities and industrial regions becomes greater each year, and embraces in its evils ever larger circles—small producers, public officers, teachers, small shop-keepers, etc. The laborer's wife, who comes home in the evening tired and worried, has now new duties to perform. She must work desperately to set in order merely the necessities of her household. The crying and noisy children having been put to bed, the wife sits and sews and patches till late in the night. The so much needed intellectual intercourse and good cheer are denied her. The husband is quite often uneducated and knows little, the wife still less. The little they have to say to each other is soon said. The husband goes to the saloon and seeks there the entertainment which his home fails to supply. He

drinks, and however little it is that he consumes, it is too much for his circumstances. Under these conditions he falls a prey to the temptation of gambling, which claims its victims also in the higher circles of society, and he loses more than he spends for drink. Meanwhile the wife sits at home and complains; she must work like a beast of burden. For her there is no rest, no recreation. Thus there arises disharmony. If, however, the wife is less true to her duties and seeks, in the evening after she returns home weary from her work, the recreation she is entitled to, then the home is left in disorder and the misery is doubled.[1]

Thus the neglected house loses much of home charm. The hard struggle for bread takes the romance out of life; and human weaknesses, which otherwise might not affect the peace and harmony of the home, are apt to be intensified until they become too great for overwrought nerves to endure.

Among the more fortunate an equally grave situation confronts us. With the passing of their occupation in the home many women come to regard economic dependence upon men as a necessary consequence, and "look upon wedlock as an economic vocation. With them marriage tends to become a species of purchase-contract in which the woman barters her sex-capital to the man in exchange for life support".[2]

There are thousands of women of the mis-called "better" classes who live in boarding houses and hotels in idle ease, or in homes where they are figure-heads, posing as their husbands' exalted head-servants, but whose only ambition in life is to be accredited with respectability, and whose only occupation is to render sex-service, mostly barren, to the husbands who furnish support as compensation.

[1] *Die Frau und der Sozialismus*, p. 124.

[2] Howard, *History of Matrimonial Institutions*, vol. iii, p. 249.

Such wives are not chattel-slaves, but willing dependents. They are not the drudging house-servants of old, nor the co-laborers of their husbands, as in our rural population. They differ in no essential from the kept woman, unless we have so low an estimate of the marriage state that we call the ceremony the essence, and a carelessly misplaced "respectability" the final test of marriage morals.[1]

As a result marriage becomes frequently little more than "legalized prostitution" and is, on the whole, thoroughly incapable of affording the happiness which the marriage relation is designed to impart. "Cupid yields to cupidity", and the probability of permanency under such conditions becomes slight. It is notably this class which furnishes the "divorce scandals in high life" and renders the subject revolting to all right-thinking people. It is failure here rightly to discriminate, that causes the reproach to be cast upon the worthy woman who seeks release from conditions that destroy her happiness and compromise her womanhood.

PASSING OF THE ECONOMIC FUNCTION OF THE FAMILY

Here is an element in the economic situation of prime importance. At the beginning of the modern economic era the family was the economic unit of society. It was an institution of expediency. It was usually large and lived close to the soil. It was an economic necessity. Its function involved not only the essential elements of race maintenance and individual well-being, but of economic life as well. Children were reared in the home. Their education and training were accomplished there. This had reference not only to the intellectual, moral and religious development, but to the training for a gainful occupation, and usually

[1] Schroeder, *The Arena*, Dec., '05, pp. 586-7.

included "a start in life". Production necessary to family maintenance, to which each member of the family contributed according to his ability, was carried on within the household. Food was produced from the soil and came direct from garden and field to the table. Flax, cotton and wool were transformed into family clothing through the dexterity of the house-wife. Shoes were cobbled and furniture was made by the husband on rainy days. If these occupations were a tax on physical strength they were carried on with a minimum of nervous expenditure. Women were of economic necessity home keepers. Their time and skill were required to the utmost. If there existed incompatibility between husband and wife, the care of children and the economic necessities of the family afforded the strongest possible incentive for adjusting or suffering the difficulties.

Within two generations changed economic conditions have wrought the most profound transformations ever experienced by the race. Within the modern economic area population is rapidly becoming urban, and with the growth of modern industry the economic function of the family is passing away. Children are no longer "brought up" in the home as formerly. Their education has been taken in hand by the state, for which they are removed from the home for several hours each day. Kindergarten, public school and college accomplish this far more skilfully than former methods. The religious training is almost wholly provided by the Sunday School and the church. Occupations are taught in the professional and technical schools without the long and unprofitable period of apprenticeship formerly required. The function of production, except of raw materials, has passed over to the shop and factory. The farmer produces less of the articles of his more elaborate table than formerly, and depends quite as much for clothing and household necessities upon factory production as the dweller in

the city. Much of the cooking, sewing, washing and ironing for the family is done better and more cheaply in the bakery, factory and laundry than in the home.

Thus the lightening of household cares has become one of the interesting features of the influence of modern methods of industry upon the institution of the family, and herein lies the hope of the improved family of the future.

But with the passing of the economic function the family ceases to be an economic unit. The members of the household are not interdependent as formerly. The home is maintained more as a comfort and a luxury than as a necessity, the cost becomes more burdensome in proportion to the service rendered, and the temptation to "break up housekeeping" increases. It is cheaper to board.

In this manner is being removed, to a large extent, what Professor Sumner regards as one of the most fundamental motives for the origin of the family,[1] and what has continued to be one of the strongest reasons for its perpetuation. The new industry of the boarding-house and the bachelor apartment, and the opportunities of individual employment offered in modern economic production without regard to sex, have shown their influence in the later age at which marriage is contracted and probably also in an increasing number of persons who do not marry at all. The same opportunities are open to the members of the broken family. If, therefore, other reasons do not exist for its continuance, economic ones will scarcely prove sufficient to hold the family together, and the divorce rate will register the result.

ECONOMIC EMANCIPATION OF WOMEN

Economic evolution, so far as it bears upon the subject

[1] *Publications of The American Sociological Society*, vol. iii, p. 1.

of divorce, is producing no more significant result than the emancipation of women. Human beings "are the only animal species in which the female depends upon the male for food, the only animal species in which the sex relation is also an economic relation. With us an entire sex lives in a relation of economic dependence upon the other sex".[1] Whether this relation is due to the "peculiarities of women as sexual beings"; or to causes inherent in our economic system, or to both, to the fact itself may be ascribed the oppression and subjugation of women in all the various phases through which the institution of marriage has thus far passed. On this basis property rights are established and maintained. In general, through the whole historic period, among civilized peoples, as well as among savages and barbarians, woman has sustained to man the relation of personal property. Whether stolen, purchased, or "given in marriage", the wife has "belonged" to her husband. Formerly he might sell her, lend her, or destroy her according to his pleasure or advantage. Not only her person but her children and the products of her toil, like that of the slave, were his. Marriage was coercive. Rarely did the woman enjoy the privilege of choosing motherhood or even of deciding who the father of her children should be. She may have been, often was, well fed, cared for and protected, and her position was not consciously oppressive, but her dependence dwarfed her personality, retarded her physical and intellectual development, and modified her to sex to the detriment of the race.

Advancing civilization has greatly modified the status of woman. Social progress and education have done much to accomplish her liberation, but not a single country in the world, as yet, affords her equal rights and privileges with

[1] Gilman, *Women and Economics*, p. 5.

her husband, while different codes of morals are still to be found everywhere.

We are profoundly indebted to August Bebel [1] and other socialistic writers for the valuable service they have rendered, for a clear and comprehensive understanding of the subject, in pointing out the causal connection of the economic system with the condition of woman. They have traced the process of adjustment to environment and paved the way for a scientific interpretation of the phenomena. This method enables us to perceive the effects of radical economic changes upon woman's growing independence and, to a degree, to weigh future probabilities.

It is to be anticipated that the emancipation of one half of the human race from bondage to the other half will be followed by fundamental changes in social relations. This is exactly what is taking place within domestic circles at the present time. In so far as the family is held together by coercive marital authority, it is destined to disintegrate. The economic patriarchal family has fulfilled its function and, as such, will cease to exist.

During the centuries of her tutelage woman has never been an idle dependent. She has always borne her share of the world's work. In primitive society she was the chief producer. Her labor has always been in demand and her value to her husband-owner has often consisted chiefly in that commodity. To this fact may be attributed, very largely, the persistence of the economic family. But her work was in the home. It was performed in connection with her occupation as wife and mother. It was her contribution to family maintenance. It was her vocation. The change in modern economic conditions, due to invention, factory production, and the growth of capital, which has

[1] *Die Frau und der Sozialismus.*

transformed her work largely from individual to social production and removed it from her home, has changed her status as a worker to a marked degree. It has resulted in giving to woman a greater freedom in the choice of a vocation. She is no longer restricted as formerly to the acceptance of matrimony as a means of support. New vocations have become accessible. According to Harriet Martineau, who visited America in 1840, there were but seven employments open to women at that time.[1] Industrial progress has widened this field in fifty years, until Mr. Wright discovered that in 1890, out of a total of three hundred and sixty-nine general groups, to which were assigned all the various industries in the United States, that in only nine of them were no women or children employed. He adds: "The apparent number of vocations in which women cannot engage is constantly diminishing, and is now relatively very small".[2]

Education and a developing personality as a result of her improved social status has qualified woman for this larger service to society, and economic conditions have furnished the opportunity. Thus the field for individual effort and the free investment of her labor-capital in the world's market has become open to her on more nearly equal terms with men. We may safely predict that with the further development of industry the opportunity for female employment will continue to enlarge.

Nor is the economic motive lacking. Woman may have worked as hard and produced as much under the old régime of domestic economy, but she received no pay. Her service was in a measure gratuitous. It was a part of her household duties which she owed to husband and family.

[1] Wright, *Industrial Evolution*, p. 202.

[2] *Ibid.*, p. 209.

She was not free. In the new forms of service open to her she enters as a free competitor. Wages are reckoned on the basis of capacity and are paid to her. Regardless of conjugal condition she is treated as an individual. She is independent.

Another great obstacle to her freedom is rapidly passing away. At the opening of the industrial period popular sentiment was decidedly opposed to female employment. She was going out of her "sphere". She might drudge and slave within her own home until her physical strength was exhausted. That was her duty. But to invade the ranks of public labor was "unbecoming". It was dangerous to her health and morals. Gradually, however, economic pressure and growing sanity are removing this prejudice. The recognition of her right as a human being to self-direction is overcoming the distinction of sex. The field is open, the motive is supplied and traditions concerning propriety must adjust themselves to the new conditions. If present tendencies are not interrupted we may safely predict the coming of a time, in the not distant future, when reproach will not rest upon "the women who work", as it does not now upon the professional woman, but will rest upon those who accept idle dependence upon husband or father as their natural right.

The growth of economic opportunity has been accompanied by another far-reaching result, the rise of women's property acts. Prior to 1840, the legal status of women in respect to property rights was determined in general by the common law. At marriage such property, real and personal, as the wife possessed passed over to the control or ownership of her husband. Her legal existence as respects the administration of property was suspended or merged into that of her husband during coverture. He is charged with her support and as compensation is given complete

control over her person and property. In two generations these conditions have been radically changed. The growth of civil and industrial liberty and economic pressure have resulted not only in changes of sentiment but also in changes of the law. "In 1839 Mississippi passed a law permitting the separate and absolute ownership by any married woman in her own name of any property acquired by her in any manner except from the husband after marriage."[1] Other states followed suit until woman's emancipation in regard to property is now practically complete.

It is a general rule throughout the United States at the present time that a married woman may receive, receipt for, hold, manage, dispose of, lease, sell and convey, devise or bequeath her separate property, both real and personal, as if sole, without joining with or receiving the consent of her husband.[2] In the United States the law has reached that lofty elevation of ethical sentiment which enables it to announce that justice knows no distinction of sex. In this country apart from voting and holding office, woman labors under no legal disabilities of sex.[3]

Thus the opening of the wide range of industrial and professional opportunity, the removal of prejudice against female employment, and the growth of property rights, which grant to women whether married or single the absolute ownership of the product of their labor, has accomplished the potential economic independence of women.

Turning now to the reports of the Federal Census and considering those since the Civil War, which cover in this country the period of the greatest industrial development,

[1] Smith, *Married Woman's Statutes*, p. 8.

[2] Bayles, *Women and the Law*, p. 142.

[3] Russell, Introduction to Bayles, *Women and the Law*, p. 14.

we find an increasing resort of American women to gainful occupations.

NUMBER AND PERCENTAGE OF TOTAL FEMALES OF TEN YEARS OF AGE AND OVER ENGAGED IN GAINFUL OCCUPATIONS.

Year.	Total.	Engaged in Gainful Occupations.	
		Number.	Per Cent.
1900	28,295,796	5,329,807	18.8
1890	23,060,900	3,914,571	17.0
1880	18,025,627	2,647,157	14.7
1870	13,970,079	1,836,200	13.1

It will appear from these figures that the gain has been constant, and while the rate does not seem to correspond to the growth in opportunity, a fact of much importance to be considered later,[1] still it is quite sufficient to become an important factor in the changed domestic conditions effecting the status of the family.

The influence of the new economic status of woman upon the divorce rate is readily perceived. Marriage is no longer the only vocation open to her and for which she is qualified. She is not forced into marriage as her only means of support, and later marriages and lower birth rates reveal the influence of this fact. If marriage is a failure, she does not face the alternative of endurance or starvation. The way is open to independent support and under diminishing opprobrium. Conscious of her legal rights, and protected in the use of property or income, she is no longer compelled

[1] *Cf. infra*, ch. xiv.

to accept support or yield to the tyranny of a husband whose conduct is a menace to her health and happiness.

Thus the removal of restraints, due to economic opportunities and the new social consciousness of women, is ample reason for increased resort of women to statutory grounds for the dissolution of the marriage tie. This conclusion is amply justified in the fact that 66.6 per cent of all divorces in the United States are now granted on the petition of the wife.

Another phase of the subject growing out of woman's improved economic and social status, coupled with changed ideals of the family, is to be found in the voluntary limitation of the birth rate which is becoming a subject of serious consideration by sociologists.[1] While the automatic limitation, due to later marriages, cannot seriously affect the question of domestic tranquillity, the deliberate effort, and its results, become a serious menace. Children are an impediment to those striving after a higher standard of living or social preferment. So that, where the economic burden of support on the part of the husband and the physical inconvenience and suffering of the wife, are viewed in the light of limitation of individual opportunity and personal advancement, the motive for restricting the number of children becomes dominant. "The growing desire to escape the natural consequences of matrimonial life has created a new mental disease, the fear of conception, which makes a mental wreck of many a normal and healthy woman.[2]

The result is likely to be either the restriction of conjugal privileges between husband and wife, with consequent irregularities outside the home, which increase the proba-

[1] Ross, *American Journal of Sociology*, Mar., '07, p. 607 *et seq.*

[2] Rubinow, *American Journal of Sociology*, Mar., '07, p. 629.

bilities of divorce on the ground of adultery, or to continued relations, sterile as far as the increase of the family is concerned, which breed all manner of dissatisfaction and discontent and become a prolific cause for divorce upon the grounds of adultery, incompatibility and desertion.

Economic development, therefore, bears a causal relation to the rise of the divorce rate. The pressure of modern economic conditions upon the home life of the people, the rising standard of living, the pressure of modern business upon the home, the change which the function of the home is undergoing because of its changed economic environment, and the greater freedom and opportunity of women to participate in the world's work, constitute the chief reasons, so far as economic conditions are concerned, why we may expect, during adjustments consequent upon these fundamental changes, to see the number of divorces increase. It will be conceded freely that these changes and new conditions give rise to many new causes of friction and irritation between married people which did not hitherto exist, but aside from these considerations, we believe that the chief factor in the problem is the circumstances which have made effective dormant causes which but for the changed condition would never have come to expression in the resort to divorce on the statutory grounds recognized by the courts.

CHAPTER XI

Social Progress

THE STRUGGLE FOR SOCIAL LIBERATION

The most significant result of modern social evolution is the establishing of the fact that individual liberty is compatible with social solidarity; that freedom of private contract does not endanger constitutional authority; that it is possible to unite "stability and continuity with liberty and progress".

But this has not been a purposive achievement of humanity consciously working toward this end. It has been the product of developmental processes which have been operative through the range of human association. The problem of human evolution has been to secure through integration and differentiation in society that qualitative result which not only guarantees race maintenance, but accomplishes it through a diminishing cost to the individual, so that we shall have not only individual liberty but a growing perfection of personality.

The general outlines of social development reveal some very interesting phenomena. Integration of social elements seems invariably to be followed by differentiation of social function. Whatever may be the organizing principle or character of homogeneity upon which social coöperation rests, increasing social cohesion is accompanied by enlarging individual liberty. This truth is apparent in all biological classification. The broader the basis of classification the

larger the diversity of species and individual types that may be included. When the only perceived basis of human coöperation is a complete physical and mental homogeneity as found in consanguinal groups, then the number must be small and the individual diversity slight. As we pass over to the other extreme and recognize some great ideal as the organizing principle, then we may have great aggregations of population in wide domain with the widest range of individual initiative. Not only do individuals become increasingly free, but liberty to enter into all forms of voluntary associations within the state is permitted, either for individual advantage or for the performance of functions originally performed by the state. This general law of evolution is stated by Herbert Spencer as follows:

We have repeatedly observed that while any whole is evolving there is always going on an evolution of the parts into which it divides itself; but we have not observed that this equally holds of the totality of things, which is made up of parts within parts from the greatest down to the smallest. We know that while a physically adhering aggregate like the human body is getting larger and taking on its general shape, each of its organs is doing the same; that while each organ is growing and becoming like others there is going on a differentiation and integration of its component tissue and vessels and that even the components of these components are severally increasing and passing into more definitely heterogeneous structures.[1]

Primitive society is organized on the basis of physical homogeneity in blood relationship into the horde-family group. The interest of the individual and the group are practically identical. The existence of the horde is dependent upon the conformity of the individual to the will of the

[1] *First Principles*, pp. 501-2.

group. Those groups survive in which individual interest is subordinated to that of the group. The family and the group are theoretically the same.

Through processes of integration hordes merge into clans and tribes. This merging is due, usually, either to external pressure as when enemies, flood or fire threaten, or to internal advantages when combined activity increases the facility of obtaining the necessary food-supply, or to the pleasure of social intercourse. The presence of other than blood relatives combined in a harmonious relation reveals the fact of a different basis of homogeneity, that of mental agreement. The primary interest of the larger group is the greater security and larger opportunity of life, but a slight differentiation of individual interests results. The interests of the individual and the group are not now identical and individual initiative takes its rise. The family now develops into the household with more clearly defined sexual relations and separate functions. It assumes the form and character suited to its growing needs.

Geographic unity, bountiful habitat, perceived advantages of association for mutual aid and protection, favor the massing of population, and tribes combine into federations. The old physical basis of coöperation disappears and the mental resemblance is extended to include general unity of purpose and agreement as to common methods of activity. Functions of government are developed and an increasing stability of the social whole results. With the diminution of petty and factional wars more individuals are released for employment in the arts of peace. Industry and commerce spring up. But in these conditions we have likewise come upon another stage in the evolution of the individual. Under the larger protection of the government which is maintained at a diminishing cost to the individual, he may pursue personal interests which are compatible with social

well-being. His freedom is enlarged. These conditions work another transformation in the family, and the patriarchal household appears.

With the rise of civilization and the development of industry and trade old ideas again prove inadequate to describe the new phenomena. The massing of great populations composed of diverse individuals of different races and religions within a limited area, in peaceful coöperation, limits the mental agreement to the sphere of a few dominating motives or ideals and the principle of homogeneity becomes ethical or idealistic. The functions of government are limited to the protection of life and property and to the guarantee of equal rights to all. The right of private contract becomes freely recognized. Individual industry with immunity from public dangers adds to the aggregate wealth of the people. Property considerations, rights of inheritance, etc., favor the single family and other forms give way before advancing civilization. The family becomes an economic institution of the highest importance and loses some other functions.

If these generalizations are approximately correct, then complete individual freedom, with equal rights and opportunities, together with a new family of choice that shall serve the highest interests of the individual and the state, awaits that complete integration of society which will result in the absolute reconciliation of world empire and universal democracy.[1]

Our purpose in presenting this brief and somewhat theoretical description of the social process in regard to the development of the family is to show, that while in certain of its aspects it depends upon the fundamental economic conditions, it does develop a series of effects which can only be

[1] *Cf.* Giddings, *Descriptive and Historical Sociology*, pp. 497-8.

understood when treated in the light of the progress of social evolution in its broader application.

The struggle for social liberation, and the reconstruction of the social order in the interest of the greater freedom of the individual, the greater security guaranteed by the law, the increased enlightenment of the masses, the larger liberty of free speech, free press, and free assembly—in short, the whole democratic movement of modern times, aside from its purely political aspects—is most significant as to its effect upon the rising divorce rate.

Historically considered, this movement began with the period of the Renaissance. The Protestant Reformation in Germany, the English Revolution and the Bill of Rights, the American and the French Revolutions, the Reform Bills and the Free Trade Movement in England, 1832-50, and the German Liberal Movement of 1848 are splendid examples of the steady social progress which modern society has achieved.

The liberal movement, which thus exerted such a profound influence upon political and economic relations, was destined to produce corresponding changes in respect to social institutions. The religious-proprietary family and the *mariage de convenance* were not adjustable to the new régime. We have seen how the marriage relation, through the changes wrought by the Reformation, ceased to be regarded as a sacrament and became a social contract.[1] We have noted the effects of the economic revolution upon the domestic institution.[2] We have now to observe that under the sway of liberalistic tendencies the old authority of the family has been weakened and a new basis has to be sought

[1] *Cf. supra*, ch. iv.

[2] *Cf. supra*, ch. x.

for its justification which will have greater respect for the growing demands of personality.

That the movement in the direction of social progress has been increasingly rapid in America since the Civil War scarcely requires demonstration. Beginning with the emancipation of the negro through the incident of the war itself, the process has gone on, affecting whole classes and groups, in a social amelioration which has been none the less real because its methods have been less spectacular. Increased complexity of ethnic elements has increased our plasticity and progressiveness without endangering our political and social cohesion. General enlightenment and culture have maintained an even pace with our material prosperity, thus strengthening the foundations of our national life, while the growth of science in its application to the social realm has exceeded its triumphs in any other field.

It is foreign to our purpose to treat the history of this progress. It is sufficient to point out that its results have been inevitable and that the end is not yet. A few of the achievements of this movement, significant for our study, may briefly be cited.

LIBERALISM AND THE AMERICAN SPIRIT

The United States beyond any other nation, with the possible exception of Great Britain, has achieved distinction through the high degree of civil liberty and personal freedom guaranteed by the constitution. A typical example of modern progress is here afforded. The intensification of the feeling of nationality and the social self-consciousness of the nation as a whole has been accompanied by an increasing realization of personality on the part of the citizen. Within the large latitude thus enjoyed a great flexibility of the social organism has been developed. Voluntary associations for the promotion of the political, social and economic wel-

fare constitute relatively a larger part of our collective activities than of that of any other people. Based upon a frank utilitarianism, social forms and institutions, of whatever sort, do not exist for themselves, but for the benefit of those that create them. A critical and scientific attitude is therefore maintained toward them and they are held to a strict accountability as to the performance of their proper function. Free from many of the traditions concerning the inherent sacredness of institutions which appertain to a monarchial or despotic form of government, Americans are not fearful of social disaster in making whatever changes are demanded by an expanding social life. Change for us does not mean social disintegration, but is rather viewed as the condition of a sustained progress.

The characteristic attitude of our people toward social institutions is similar to that set forth in the Declaration of Independence concerning government. Institutions exist to promote "life, liberty, and the pursuit of happiness". When for any reason they "become destructive of these ends, it is the right of the people to alter or to abolish them and to organize new ones, laying their foundations on such principles and organizing their powers in such form as to them shall seem most likely to effect their welfare and happiness." [1]

This spirit of liberalism has had far-reaching results. Objectively, it has made for efficiency through our whole social organization and has prevented fixity of type. Subjectively, it has been productive of the open mind. As a total result we have arrived at a state of complacency in regard to the perpetuity of our free institutions which no alarmist-propaganda is able to disturb. Prophesies of dire

[1] Slightly paraphrased.

political and social disintegration are not able to stampede any considerable number of the people at any time. Since sufficient time has not elapsed to afford an adequate test of many of our institutions, confidence in their stability is less a product of experience than of conviction. It is the result of our faith in the principles of social evolution ultimately to accomplish our highest social good.

In this general attitude of mind we discover a basic reason for the phenomenon we are seeking to explain. We observe the family from the same point of view from which all other social institutions are regarded. It enjoys no special protection or taboo which shields it from the test of utilitarianism. It, with all others, must serve the end of its existence or undergo transformation. As other higher ethical considerations are added to the function of race maintenance the test of efficiency becomes of greater importance. Failure becomes an increasing calamity. Since it is not compatible with American ideals of justice and freedom that the institution should be held more sacred than the individual, the remedy is to be found in the transformation of the former rather than in the sacrifice of the latter.

When, therefore, changed economic conditions and other influences incident to the industrial revolution began to exert an increasing pressure upon the family and to compel a new adjustment because of the inadequacy of the older forms, there was not encountered the stolid opposition based upon tradition to be found among older and more staid commonwealths. The process of social evolution had fewer obstacles to encounter and hence the rapidity of its advance.

We have here, then, one of the influential psychological elements which helps to explain why the rate of divorce, which is rising all over the civilized world, is more rapid in the United States than in any other country.

INDIVIDUAL LIBERTY

We have already pointed out the significance of the individual in the movements of modern civilization. Since the discovery of the individual in the Renaissance of the fifteenth century, steady progress has been made in the achievement of intellectual, political and religious liberty. The exercise of individual rights and initiative within reasonable limits has become the established prerogative of free persons and has proved alike beneficial to the citizen and the state. The investment of personality is an unquestioned virtue. It has yielded large returns in every sphere of activity. It has increased wealth, ministered to the enlargement of life, and multiplied the sum total of human happiness.

A further word, however, as to the specific influence of the growth of individual liberty under American conditions is desirable. The unrivaled economic advantages of the New World were exceedingly attractive to the enterprising on the other side of the Atlantic. Here the opportunity was afforded to every man to improve his conditions according to the measure of his own capability, economy and thrift. Because of religious intolerance in the Old World, those who were subject to persecution came to look upon the New World as an asylum for the oppressed, where every man might "worship God according to the dictates of his own conscience". These and other agencies were instrumental in selecting for our first colonists and early settlers a race of energetic, adventurous and liberty-loving folk, among whom the doctrine of individualism would be a natural development.

If inherited traditions and the influence of the mother country in the case of our English settlers prevented the full realization of the dreams of individual liberty in the

Colonial Period, the second selective process met with better success. Our true individualism grew up in that race of hardy pioneers, the most daring representatives of a sturdy people, who wrested the wilderness from its native savage possessors and opened it to civilization. With these men and women individualism was not a theory but a fact of their existence. They were scattered, isolated, dependent upon their own resources. Each family was a complete, self-sustaining economic group.

Thus the independence and self-reliance of the individual which manifests itself in the peculiar phenomenon of the isolated farm-house in all the rural regions of the United States, is as clearly marked in its influence upon our social and political institutions. It has been a dominant characteristic of our whole national history. The revolutionary revolt against Great Britain arose chiefly out of such causes as (1) restriction of our trade in such a way as to deny to the individual the right to the products of his own industry, (2) taxation without representation, (3) the exercise of arbitrary power in judicial control, and (4) the effort at coercion through military domination. These were all regarded as destructive of the freedom of the individual. The obstacles encountered in the formation of the Union and the difficulties involved in its maintenance are but other aspects of the spirit of individualism characteristic of the American people.

Viewed with reference to its bearing upon our social situation, this mental attitude leads to the wholesome disregard of forms and conventionalities whenever they seem to stand in the way of human progress. It is not likely that the spirit of individual liberty in the future will be hindered by traditions or by institutionalism. It will be limited only by the perversion of individualism or the more wholesome restraints of the social well-being.

As touching the rate of divorce, the influence of individualism results in a strong tendency to resort to family relations that promote individual welfare. When the union results unfavorably to this end, there is destined to be speedy and free recourse to the statutory grounds for legal separation. Divorce laws may remain the same; they may even become more stringent; legal sanctions may be backed-up by popular prejudices, but the divorce rate will tend to rise wherever this tendency operates until improved conditions in the family are secured. That this cause has become increasingly operative in the period of our study is due to the fact that it could produce its results only under the changed economic, social and religious conditions which have removed the hindrances formerly obstructing its operation.

POPULARIZATION OF LAW

One of the interesting outgrowths of our social development has been the popularization of law. Professor Willcox has not only presented this point in an able and graphic manner, but he has connected it definitely with the "rate of increase". We cannot do better than to quote his paragraphs:

During the Middle Ages law was a personal privilege. For centuries legal forms of procedure continued so intricate and expensive that the benefits of the law accrued only to the wise or wealthy. Along with extension of the suffrage in modern times has come an almost equal extension of legal privileges. Whole classes have been admitted to court that were formerly excluded by the efficient practical prohibitions of ignorance and poverty. The change in the position of the negro, effected by his emancipation, is but a single striking illustration of what has been going on constantly as the result, on the one hand, of laws simplifying procedure and diminishing the expense of legislation, and, on the other, of the better education of the community in matters of law. This education

is conducted largely by the newspaper press of the country. Many a man would live in ignorance that such a thing as divorce existed were it not for the conspicuous mention of trials in his morning paper. Thus the law has become a weapon of offence or defence for a very much larger part of the population than could use it even so recently as fifty years ago. In considering the rate of increase estimated from the figures this must be borne carefully in mind.

Imagine society as a huge pyramid in which the position of each individual is determined by his knowledge and wealth. Imagine a horizontal plane intersecting the pyramid to represent the divorce law of the community, and all the persons above the plane to possess so much knowledge and money that divorce is to them a theoretical possibility while to those below it is not. If the plane be motionless the rate of increase of divorce may be found; but if it be gradually sinking toward the base of the pyramid, and making divorce a practical possibility to an increasing proportion of the whole population, this change must affect the calculation. Such a descent of the divorce plane has been in progress in this country, apparently, for the past twenty years. While it does not invalidate the previous conclusions, it does influence them, perhaps materially, and certainly renders untrustworthy any estimate for the future.[1]

With the statistics of the second period of twenty years before us we are able to observe the striking way in which the figure of the pyramid describes the phenomenon. The plane of divorce possibilities has been sinking toward the base of the pyramid for another period of twenty years. Assuming its descent to have been at a uniform rate, the ratio of the divorces of the first and second periods tends to approximate the ratio of the two areas of the planes calculated at the end of the two periods.

[1] *The Divorce Problem*, pp. 63-4.

The significance of the increasing accessibility of the law for our theory is, not that it would necessarily be the immediate cause of a single divorce, but that so far as it touches that class of persons who are living in unhappy marital relations or in those instances where these relations have been completely broken off, but who, on account of ignorance or poverty, had no recourse to the divorce court, the placing of the law within their knowledge and reach would be the occasion of divorce in numerous instances. Existing evils would not be increased; they would simply be revealed.

Until the time, therefore, that the plane in our illustration reaches the base of the pyramids, and all alike have access to the law, the increasing opportunity will continue to be a means of producing an abnormal increase in the number of divorces.

INCREASE OF POPULAR LEARNING

One of the most potent factors in the movement for social freedom has been the increase of popular learning. Education has ceased to be the peculiar distinction of the privileged classes. It has become the possession of the masses.

It is difficult to express statistically the degree of education enjoyed by a social population. At present no general or direct methods are employed in gathering statistics of intellectuality. We are left, therefore, to indirect methods.

The negative aspect revealed in the degree of illiteracy is perhaps the best accessible index. In the United States uniform statistics of illiteracy have been published since 1880. These show that while the population from 1880 to 1900 increased 34 per cent, illiteracy decreased from 17 per cent to 10.7 per cent in the aggregate population ten years of age and over. The total number of illiterate persons in 1900 was 6,180,069, while in 1880 it was 6,239,958.[1] This de-

[1] *Twelfth Census of the United States. Population*, vol. ii, p. xcviii.

crease in illiteracy is exceedingly interesting in view of the great increase of population during the same period and in spite of the fact that much of this increase is due to the immigration of foreign elements in which the degree of illiteracy is greatly in excess of that of the native population.

An index to intellectual culture, as contrasted with the mere question of illiteracy, is the number of educational institutions that are required to carry education beyond the elementary instruction given in the public schools. The increase of this class of institutions in the United States in the last few decades has been phenomenal. The secondary schools have increased from a scattered few in some of the large cities in 1870, to 2,526 in 1890, the number reaching the enormous total of 8,031 in 1906.[1] In 1800 there were twenty-four colleges and universities in the United States.[2] In 1870 there were 369,[3] while in 1906 there were 622. Similar increase is shown in professional and allied schools. The growth of public circulating libraries, night schools, summer schools, correspondence schools, Chautauqua assemblies, university-extension teaching, literary clubs and circles, etc., indicates the tendencies toward the acquisition of intellectual culture on the part of the masses outside the regular instruction in the schools, colleges and universities. The ever-increasing volume of periodical literature and the daily press are placing general information in the possession of the whole American people.

The function of popular education both in the production and in the defense of individual and social liberty cannot be overestimated. Knowledge, here as elsewhere, is power. The rise of culture is accompanied by increased self-confi-

[1] *Report of the Commissioner of Education*, 1906, vol. ii, p. 697.

[2] Shaler, *The United States of America*, p. 315.

[3] *Report of the Commissioner of Education*, 1906, vol. i, p. 445.

dence and efficiency both in the individual and in the group. It results in emancipation from superstition and tradition. The growth of scientific knowledge with its respect for orderly sequence in nature and events, is not only productive of economic prudence and providence, but develops the power of foresight and self-direction in every aspect of social conduct. In a population thus intellectually equipped, all manner of obstructions that hinder freedom and progress, whether due to the tyranny of men or the domination of traditions, become increasingly obnoxious. This results, not because conditions are worse, but because under higher degrees of enlightenment they are more clearly perceived. Much of the social unrest of our time is due, not to more unwholesome social conditions, for social conditions in general have been greatly improved, but to the higher degree of intelligence enjoyed by the masses which makes injustice and inequality of opportunity harder to bear with resignation. Wrongs are more keenly felt and as a result rights are more persistently demanded.

Thus, while evils exist in the body politic, the growth of intelligence may become a disturbing element and at the same time a most efficient means of advancing the public good.

Imagine now that we have a situation in which every other condition of marriage remains unchanged. Given a rapid increase in education and culture and the influence of this factor will at once appear. Here, as in every other relation, wrongs and inequalities exist. Previously, they have not been sufficient to disrupt the family tie; they have simply been endured. With the keener recognition of the difficulties they become a greater burden, and if too deeply rooted to be righted, they become in time insufferable. This is not at all an unwholesome condition, though its immediate results may seem disastrous. The ultimate result will

be a higher standard of happiness and improved home conditions.

IMPROVED SOCIAL STATUS OF WOMEN

One of the most conspicuous joint products of the growth of individual liberty and of increasing enlightenment is the improved social status of women. The inferior position of woman, due to her economic dependence, to ascetic ideals of marriage, and to her lack of intellectual training, could not remain unaffected in the general movement for social liberation. The increase of civil and individual liberty, the growing recognition of equal rights afforded by the accessibility of the law, and the general movement of popular enlightenment have all contributed in the case of woman to afford her occasion for demanding her just share of human rights and privileges. Oppression and dependence were destined to give way before the force of principles which have been working for centuries but are only now finding adequate expression. Under the new conditions woman is ceasing to be the chattel of fathers and husbands. More and more are legal recognition and protection afforded her by the law on an equality with men. Ascetic ideals have been so far abrogated that marriage and motherhood are becoming matters of choice and consent. Improved social and economic conditions have lightened the burden of domestic responsibility and opened to her possibilities of a career for which she may be endowed by nature, or prepared by culture, either within or without the confines of her home. It is not surprising, therefore, that she should have arrived at a somewhat greater consciousness of her own personality; that she should be wide awake to the existence of injustice that before had not been realized.

The significance of the effects thus produced upon the

divorce rate is as perspicuous as it is important. The freedom of women is the death-blow to survivals of the patriarchal and purchase systems of marriage. Although many wives still regard it as a sacred obligation to endure a species of martyrdom in marriage out of reverence for the institution or in the supposed interest of children, an increasing number are coming instinctively to feel, if not clearly to see, that a course of conduct cannot be destructive of life and personality and at the same time in accordance with the highest morality. Hence the growing tendency to revolt.

Under the old régime, however, the privilege of divorce was chiefly the prerogative of the husband. The wife had little redress for her wrongs. Under modern conditions the disabilities of sex have been so far removed that women have as free access as men to the divorce courts. Neither the right nor the opportunity is, then, denied to those women whose marriage relations are unhappy to free themselves from tyranny or abuse, and with the motive intensified by a clearer perception of the wrongs involved we might reasonably expect that an increase of divorces on the application of women would result. That this logic is borne out by the facts, a mere reference to the statistics of the application for divorce will reveal.[1]

This does not at all indicate that family conditions are worse than they were forty years ago. On the contrary, it indicates the growth of a healthy moral sentiment. With the acquisition of new rights and immunities, women have chosen to exercise them to obtain relief from abuses to which they were formerly indifferent or from which they could not formerly escape, and the divorce rate to that extent becomes the index to the growing freedom, intelligence and morality of American women.

[1] *Cf. supra*, ch. v. also, *infra*, ch. xiii.

In this hasty review of some of the chief products of the social transformations due to progress, our one purpose has been clearly to point out some inevitable results. The conditions thus revealed do not necessarily force us to the conviction that our marital conditions are increasingly immoral. They do not prove that they are not. We have simply tried to establish the fact, that the conditions generally surrounding marriage being the same, there is ample ground, partly at least, to account for the continuous rise of the divorce rate during the continuance of the active operation of the principles of social progress in the sphere of individual and social freedom. This can be alarming only to the reactionary who holds that any remedy for the evil of unhappy marriage is worse than the disease.

CHAPTER XII

Ethical and Religious Readjustment

RELIGIOUS CONSERVATISM

Throughout the entire course of history religion has been one of the strong and determining factors in human conduct. Beliefs which have obtained the reinforcement of religious sanction have exerted a controling influence in individual action, and social customs, which have been invested with a religious nature, have been determinative in social conduct. Traditional beliefs and immemorial customs which have taken on a religious significance survive and retard the effect of other causes which tend to produce change in the social order. Thus the religious taboo, enjoyed by ideas, customs or institutions, has offered them protection, to a large degree, from other potent influences. Religion has been one of the conservative forces in society. It has made for social solidarity. If it has seemed sometimes to stand in the way of progress, it has likewise prevented many destructive experiments in social policy. It would appear, therefore, that while economic development and social progress have been increasing the probabilities of divorce, religion has acted as a repressive agency and has set effective checks upon the free operation of these tendencies.

Among adherents of the Roman Catholic faith the power of the church is sufficient practically to overbalance all other influences and divorce is rare. Among Protestants, al-

though statistical demonstration is not readily obtainable, it is undoubtedly true that the teaching and influence of the clergy and the survival of the sacramental idea of marriage in the church are sufficient to deter many from the pursuit of their inclinations and the exercise of their legal rights. That changes in the form of the family, due to the pressure of influences set forth in the preceding chapters, have been no more rapid, and have not manifested themselves earlier, is due in a large measure to the conservative influences of religion.

PASSING OF THE DOGMATIC AGE

It is necessary now that we should point out some radical and consequential changes taking place in the sphere of religion and morals, which at the present time are tending to modify the restraints formerly imposed.

The attitude of the Roman Catholic Church remains practically unchanged and consistent, but in Protestantism most profound changes have taken place, whose influence upon the divorce rate is readily discernible, and these changes are coincident with the period of the most rapid achievements in economic and social progress. Furthermore, these factors are not sufficiently ostensible to be taken into account by the superficial observer. It is the commonly accepted view that, on the whole, religious restraints have become more powerful. This conclusion is supported by the fact that ecclesiastical legislation within the last few years has grown more stringent,[1] and that the increasing hostility of the clergy toward divorce is revealed in their frequent action in ministerial alliances in adopting resolutions against divorce and in their agreements to refrain from marrying divorced persons. It was shown in a previous

[1] *Cf. supra*, ch. viii.

chapter that the Inter-Church Council on Marriage and Divorce sought to unify the action of the churches and to secure a greater degree of comity in regard to the enforcement of the laws and usages of the several churches concerning the remarriage of divorced persons.[1] It would therefore appear that the restraint of the Protestant Church increases in proportion as the general conditions of divorce become more favorable. But the stubborn fact remains that in spite of this increased activity the divorce rate continues to rise with undiminished rapidity.

It does not augur well for the future of society to concede the growing impotency of moral restraints, or to assign the reason to "the progress of unbelief". Nor do we believe that this offers any better interpretation of the phenomena than that which proposes human perversity as the explanation of the rise of the divorce rate in general.

A more careful scrutiny of the present religious situation, we believe, will show that the real forces which are actually producing present results are not those which manifest themselves in ecclesiastical legislation, or in reactionary clerical resolutions which represent the conservative influences in the church, but are those which reside in the nature of our modern social and intellectual life, and which although not so spectacular, are nevertheless producing the changed religious and moral ideals of the present. This radical and fundamental change in the typical religious thinking of the ages is due to causes both mental and material.

The modern intellectual era may be said to date from 1859, when Darwin published his *Origin of Species*. Since then the whole intellectual process has been transformed. The theory of evolution has given to us not only a new

[1] *Cf. supra*, ch. viii, p. 140.

geology, but also a new theology. It has caused the shifting from the deductive to the inductive method in the search for truth and has transformed the whole range of literary and scientific studies. It has demonstrated the futility of dogmatizing in philosophy, politics or religion. In describing the cosmos as a unity of which the various sciences are but so many aspects, Herbert Spencer made a contribution to theology which should rank him among the great theologians of his day.

It is impossible that an age so materialistic and practical as ours should be without influence upon the concepts of religious thought and modes of expression. Morality is no longer transcendental. It is "that unconscious bias which is growing up in human minds in favor of those among our emotions that are conducive to social happiness."[1] Its content changes with the nature of civilization and the character of its social ideals. A utilitarian age expresses itself in practical ethics. The civilization of the present is coming more and more to concern itself with the church only so far as it ministers to this practical end.

What are the results? Two generations have witnessed the passing of the dogmatic age in Protestant Theology. The heresy trials of the past few decades mark definite progress in the emancipation of the church from the sway of medieval dogmatism. The whole structure of traditional religious conceptions has been completely transformed. Doctrinal names and formulas are no longer adequate to express the deeper content of the religious consciousness. The old static, dualistic view of the world with its creationist theories and their counterpart, institutional and theoretic morals, have been replaced by the new scientific outlook with

[1] Sutherland, *The Origin and Growth of the Moral Instinct*, vol. ii, p. 306.

its evolution-concept, its universality of law, and its stringent genetic method. The church of to-day is coming rapidly to realize that neither ritual nor dogma constitutes the end of its existence and that they do not give any guarantee of its permanency. Character, not creed; service, not orthodoxy, are the present tests of religious validity. The time-honored landmarks of religious authority have been obliterated and thoughtful men everywhere are seeking for a new definition of authority which will not violate the conscience of the new age. In this pursuit external sources are not likely to yield more satisfactory results in the future than in the past. The new authority arises from within. It is the product of human necessities and human needs.

REVISED ETHICAL CONCEPTS

Thus to a large extent a religion of thought has been replaced by a religion of action, and metaphysical concepts have come to be less esteemed than spirit and conduct. With this change in view have come new ethical valuations. The stern morality of Puritanism, based upon theoretical standards, is giving place to a practical morality arising out of our changed social conditions. Virtue no longer consists in literal obedience to arbitrary standards set by community or church, but in conduct consistent with the highest good of the individual and society. Whereas piety in marriage once consisted in loyalty to the institution of marriage, and any suffering which might arise was to be endured rather than bring reproach upon an institution vested with peculiar divine sanction; to-day our changed ethical ideas cause us to feel that marriage was made for man and not man for marriage, and that the moral value of marriage consists in the mutual happiness secured to those who enter into it. Where this condition does not and cannot exist, then the highest interests of the individual and the

state are conserved only by the sacrifice of the fruitless marriage and the placing of the individuals in a position where relations such as will result in happiness may be entered into.

Thus a new humanitarianism in religion and ethics has arisen to take the place of the theoretical standards of orthodoxy of a generation ago. It rests upon practical morality, and values institutions in proportion to the service they render in the formation of human character and the production of human welfare.

The present tendencies, we are persuaded, exhibit a rising and not a falling standard of morals. Because the point of emphasis has shifted many have been misled. The social unrest of our time is due, not to worse conditions, but to better. Agitations in the industrial world are due, not to lower wages or greater oppression, but to the development of an industrial conscience. Municipal reforms are the product of an ethical awakening in the realm of civic righteousness. Political strife reveals the presence of purer political ideals. Religious reformations arise out of higher conceptions of divine truth. Precisely in the same manner our modern social life manifests the signs, not of moral decadence, but of moral progress, and in the end evil is not likely to result from a movement which has its origin in an ethical renaissance.

From this point of view there is no necessity for concluding that an increasing divorce rate is due to degeneracy and a decline in social morality. On the contrary, the divorce movement in certain of its aspects is the sign of a healthy discontent with present moral conditions and marks the struggle toward a higher ethical consciousness in regard to sexual relations.

Moral pressure often adds to the number of divorces in a community by compelling persons to secure legal separa-

tion where actual separation has already taken place, in order that the new ties which have been formed may be legalized. It is likewise true that internal moral compulsion not infrequently leads men and women to break off false relations and to seek through divorce and remarriage to live decently with natural companions.

Thus the changes in religious and ethical concepts have been followed by results which sustain relations to our subject. A few may be noted briefly.

INTOLERANCE OF EVILS FORMERLY ENDURED

In the sphere of domestic relations this changed view results in making married people intolerant of evils which they formerly endured. The potency of an awakened individual consciousness, of a growing intellectual freedom, and of enlarged economic opportunity, is further increased by a quickened moral perception. This is especially effective where clear moral issues are involved. It is not necessary in order to produce a rise in the divorce rate that immorality should increase. Assume that the moral status in marriage conditions remains the same, and that moral perception is clarified. The result will be precisely the same as if the moral consciousness should remain undisturbed while immorality increased. Improved ethical standards or increased ethical culture may therefore become as efficient disturbing causes as increased immorality, but the final result will be vastly different.

This gives significance to the correlation which manifestly exists between the high ethical development of the American people and the increase of the divorce rate. Many practices which were formerly condoned within the marriage relation have lately become obstacles to domestic tranquillity. Treatment which married women as a rule regarded at one time as the husband's natural right is now vigorously re-

sented. Few men or women to-day will brook infidelity to the marriage tie, and the amount of cruelty and brutality which American women will tolerate is rapidly diminishing. Until the time, therefore, that moral conduct shall more nearly conform to improved moral ideals, the high divorce rate will continue to be a most vigorous protest against the discrepancy. A few specific results may be noted.

AN EQUAL STANDARD OF MORALS

Practical ethics knows no distinction of sex. Present ethical tendencies are making effective demand for an equal standard of morals for both sexes. The social inferiority of women in all ages, due chiefly to their economic dependence, is largely responsible for the rise and the persistence of a dual standard. Under penalty of starvation for one class, and fear of a less luxurious support in idleness for another, wives have often submitted to a double standard of morals repugnant to all their finer sensibilities and sense of justice. With the change in the social status of women the necessity for the toleration of such discrimination is passing away. Married women are compelled to-day, neither by economic necessity to obtain a living, nor by the force of public opinion out of deference to the institution, to submit to indignities that compromise their womanhood. According to our present standards it is neither religious nor moral to maintain a relation that involves injustice and inequality. The woman, therefore, who rebels at the tyranny which would impose upon her the necessity of tolerating, under the guise of marriage duty, conduct repulsive to her moral sensibilities, finds vindication and justification in the judgment of an enlightened public conscience.

So far as the second class is concerned, we are persuaded that the number who value self-respect above mere convenience, who prefer to sacrifice social position rather than condone moral duplicity, is on the increase.

HIGHER IDEALS OF DOMESTIC HAPPINESS

Another result readily attributable to the improved ethical culture of our age is our higher ideals of domestic happiness. Ideals compatible with the nature of the economic family of necessity are inadequate under our changed conditions. As the family ministers less to the necessities of life it ministers more to its amenities. The home is more than a place in which to eat and sleep and work. It is a school of affection and of spiritual discipline. It is a society for mutual helpfulness. If it ceases to be that, its function has largely passed away and its form ought not and will not much longer endure. If agreeable and helpful companionship cannot be maintained within the home there are few other reasons to-day for its existence. Comfortable bachelorhood is preferable to infelicitous wedlock. Hence a state of disharmony, a relation deficient in the higher ethical values, easily endured in the family whose coherence rested chiefly upon its economic advantage, may furnish the strongest motive for disintegration in the family based upon mutual happiness and helpfulness.

Nor do we think the argument for the maintenance of the unhappy family is strengthened by the claim often made in respect to the care of children. We are quite persuaded in our own mind, a conviction strengthened by observation and inquiry, that in the vast majority of cases the children fare much better and their chances for arriving at a career of happiness and usefulness are greatly enhanced if given into the custody of either parent than if compelled to be reared in the atmosphere of discord and contention.

THE NEW BASIS OF SEXUAL MORALITY

Perhaps the chief effect of the causes we are considering is manifest in the development of the new basis of sexual morality. As the function of the family undergoes the

transformation from that of practical expediency to the higher conception of mutual interest and affection, uncongeniality and incompatibility become much more serious matters. They are quite as capable of destroying the purpose of marriage as were much graver difficulties under the old régime. Ethical values come to reside in those qualities of mutual attraction and preference which are coming to constitute the basis of marriage. Aside from certain modifying limitations of social utility "the acceptance of a sincere love between a man and a woman who would live together and be parents, as the only workable and decent foundation of the marriage relation",[1] is coming to be regarded by society as the ideal. It is from this point of view that we begin to regard all marriage based upon economic or social advantage as a bargain in sex and a form of legalized prostitution. And furthermore, that coercion, whether on the part of church or state, which compels one person to live with another person of the opposite sex in repugnant conjugal relations, does violence to all the higher ethical instincts of the soul and thus comes to be regarded as a species of despotism incompatible with free institutions.

Thus it has come about, not by conscious planning, but by the transformations wrought by social forces, that the restraint formerly imposed by institutional religion is giving place to the favorable impetus afforded by practical ethics. Popular moral sentiment which more than ever regards the ideal marriage as the supreme method of realizing the perpetuity and education of the race, nevertheless recognizes worse evils than divorce, and has come not only to approve, but to encourage the breaking of the conventional marriage tie in preference to the crushing of the human spirit.

[1] Giddings, *The Twentieth Century*, March, '06, p. 18.

CHAPTER XIII

Causes of Local Variations

It is not presumed that the general causes of divorce, presented in the three preceding chapters, operate with any great degree of uniformity throughout continental United States. On the contrary, in a country where such varied economic, social and religious conditions exist, it is to be expected that wide variations in the divorce rate would be found. The situation is further complicated by such elements as the extreme mobility of our population, inter-state migration either for the purpose of securing divorce or for economic or other reasons, the unequal distribution of diverse ethnic stocks due to immigration, the variety of religious and social conditions in the various racial groups, and the like.

The divorce rate in any local community, county, state or geographic division, as in the United States as a whole, is a resultant of all the facts and forces bearing upon the problem.

Thus far our interpretation has dealt merely with the general causes affecting the continental rate. Were the data available, we believe it would be possible to explain the minutest variation in the various localities and among the different classes. In the absence of such detailed information we must confine our expositions to the distribution in the larger areas and among the most conspicuous variations where minute differences are lost in the aggregate.

VARIATIONS IN DISTRIBUTION

Turning our attention first to the variations in the divorce rate exhibited in the several geographic divisions, we have already noted that the rate in the North Central division is the most typical, when compared with the continental rate.[1] It is a fair assumption that economic, social and religious conditions in this group of states, therefore, present the nearest approach we have to a norm for the purpose of comparison with other groups. On the basis of our general interpretation, then, the Western division, with the great industrial and commercial expansion incident to the development of the new country, together with the absence of religious and social traditions which belong to older and more established communities, would be the one in which we should expect to find the highest and most fluctuating rate throughout the whole period of our study, and this in fact is the case.

It is probable, however, that no group of states has made greater material progress since the Civil War than that made by the South Central group. Texas and Oklahoma, in their rapid economic development, have exhibited truly western conditions and have rivaled the western states in this particular, while the expression, "The New South," has become suggestive of the general progress of the group as a whole. The colored population, admitted to legal and political equality, has probably equaled, if it has not surpassed, the white population in finding increasing access to the divorce courts. We should therefore expect, and are not surprised to discover, in this group a low rate in the beginning of the period, followed by an exceedingly rapid increase.

While the South Atlantic states have made similar ma-

[1] *Cf. supra*, v, pp. 76-7.

terial and social progress and compare favorably with the Eastern group of South Central states in these respects, an element of conservatism enters into the problem. The lowest divorce rate on the continent is found in the unbroken row of nine states bordering on the Atlantic Ocean from New York to Georgia, including Pennsylvania. That this condition is due chiefly to the powerful deterrent effect of public opinion which disapproves of divorce, is apparent from several points of view. For instance, it finds expression in the laws prohibiting divorce for any cause in South Carolina, in those permitting it only for the cause of adultery in New York, and in the reactionary legislation upon the subject in recent years in North Carolina. Again, in the states of this group where the laws permit divorce for various reasons, the people do not avail themselves of the legal privileges in this respect and the divorce rate remains abnormally low. And furthermore, the high degree of economic development and social progress in these states would naturally tend, as it does elsewhere, to produce a higher divorce rate. This repression is doubtless due to such influences as the conservatism of the churches of the Atlantic seaboard, to the survival of customs and traditions almost hereditary in the early population of this region, and, particularly in the northern portions, the presence of large elements of foreign population, chiefly Romanist and Jewish, among which divorce is comparatively rare. These influences have undoubtedly operated to retard the progress of divorce in both of the Atlantic divisions and have served to offset other forces which, more or less unhindered as they are in the other divisions, would have resulted in a much higher rate. The South Atlantic division, however, shows a considerable gain in the rate between 1895 and 1905, approximating that of the country as a whole, and the indication is, that in the future, for a time at least, the natural

forces at work will overbalance traditional ones and that the rate will rise more rapidly.

In the North Atlantic division, conservative influences are still dominant, but changes are already clearly manifest in some of the states of the New England group, except for which, this division would show but little increase above the growth of population.

On the basis of these generalizations and upon close scrutiny of the nature of the curves in our graphic illustration,[1] especially during the decade 1895-1905, we conclude that the observation made by the Census Report, that the divergence among the geographic divisions seems to be increasing instead of diminishing,[2] is true only for the period as a whole, and already tendencies are apparent which indicate that ultimately the divergences will diminish and that the curves representing the divorce rate in the several divisions will tend gradually to approach the norm. We are convinced, moreover, by considerations which will be adduced in the next chapter, that beyond a certain point we shall witness a diminishing and not an increasing norm, or statistical "mode".

The interpretation of variations among the states and smaller divisions requires investigations too minute to be undertaken in this survey. It is sufficient here to suggest that these variations are doubtless explainable upon the basis of our general method, giving due weight to the varying local conditions.

Until it shall be more clearly established that there is a difference in the divorce rates between city and country, no explanation is required. It is probable that rural development in the United States has kept close pace with urban,

[1] *Cf. supra*, v. p. 77.

[2] Report of 1908-9, pt. i, p. 14.

some causes operating more potently in the one case and some in the other.

As to the difference existing between white and colored people in respect to divorce, it is natural to expect that the immediate effect among the negroes of the sudden substitution of individual freedom for the external restraint of the master's authority, would be to render their character unstable until a new internal moral stability should be developed. We should expect this instability, for a generation or two, to be registered as freely on the divorce calendars as in the criminal dockets. But along with this condition have gone such revolutionary changes in the industrial and social conditions of the white people of the South that the tide of domestic disorder seems to have risen about as rapidly among them as among the negroes. Local differences apparently favor first the one race and then the other.

VARIATIONS OF APPLICATION AND CAUSE

We turn next to some of the chief variations in regard to application and alleged cause for divorce. The economic and social changes which have taken place in recent years have affected wives to a much greater degree than husbands. This, in a general way, may account for the increases in the proportion of divorces granted on the petition of wives.[1] That this increase is not greater, is due to facts to be considered in regard to causes for which divorces are granted. The differences observed in regard to application for divorce between the North and South are commented upon in the recent Census Report. After eliminating the colored element of the population as a factor, because of the fact that as early as 1867, at which time the colored element could have entered very little into the problem, the propor-

[1] *Cf. supra*, v, p. 85.

tion of divorces granted to husbands and to wives was about the same as at the present. The report continues:

> In general, white women in the Northern states have a greater degree of economic independence than white women in the South; that is, they have more opportunities to obtain employment and are more accustomed to the idea of earning their own living. This may influence their attitude toward divorce, by making them less dependent upon their husbands for support, and more ready to dissolve the marriage tie, when it becomes a cause of unhappiness or suffering.[1]

To this explanation, we think, should be added the greater social freedom enjoyed by Northern women. Chivalric ideas of womanhood have never been current in the North as they have been in the South. Less opprobrium, therefore, attaches to the woman who asserts her independence. Were it not for some such conservative influence, the changing economic conditions in the South would induce a more rapid increase in divorces granted upon the application of wives than the figures reveal.

It will be impossible here to explain the intricate variations in the divorce movement displayed in the tables pertaining to the causes for which divorces are granted.[2] With our present inadequate information upon certain factors in the problem many of the causes cannot be determined. A few of the more general explanations, therefore, must suffice.

It may at first seem somewhat paradoxical to assert that the reason why the emancipation of women has not resulted in a larger ratio of divorces granted upon their application is that this very fact has served to increase divorces upon the application of husbands as well. By estimating the

[1] Report of 1908-9, pt. i, pp. 24-5.

[2] *Cf. supra*, v, pp. 87, 88 and 89.

significance of the changes which have wrought this emancipation in general, and in reference to a few of the major causes of divorce in particular, we shall be able to discover some of the reasons which justify this assertion and to find the explanation of the seeming paradox.

Professor Willcox states as a maxim that "Divorces to wives measure their resistance, not their burdens".[1] Transformations in economic, social and religious conditions in the past forty years have increased this resistance. They are less under the necessity now than formerly of enduring unhappiness or suffering in wedlock, and consequently have more freely sought release from the marriage bond when circumstances have required. But this growing independence of spirit on the part of wives has, not infrequently, resulted in a rude shock to numerous husbands who are still imbued with the patriarchal idea of the right of lordship over the wife, or with the more poetic notion of the "clinging vine" relationship of the "weaker member" of the marriage union. In multitudinous instances "his lordship's authority" has been repudiated, and the "vine" has refused to "cling" after the ancient fashion, and the aggrieved husbands have made remonstrances in the divorce courts.

The general decline in the percentage of divorces for the cause of adultery is probably less due to the decrease in the crime itself than to the diminished scandal attaching to divorce in general, so that justification does not need to be sought in the application for divorce on "Scriptural grounds". It is probable that many divorces are now obtained for "lighter offenses" which formerly were secured on the ground of adultery. This is probably less true in the North Atlantic states than in any other—divorce being

[1] *The Divorce Problem*, p. 35.

permitted in New York only for the cause of adultery, which accounts, in part at least, for the high rate of divorces obtained by wives for adultery in that group.

That in numerous instances wives have exercised their growing freedom and opportunity and have tolerated less duplicity and disloyalty on the part of husbands is certainly true, but the greater independence of women together with the changed character of our modern methods of living, which, to large classes of women has granted less protection than the seclusion of their own homes formerly afforded, has undoubtedly increased the proportion of adultery among women and the increasing number of divorces granted to husbands over those granted to wives for this cause is the result.

That husbands still obtain the vast majority of divorces for adultery in the South is due no doubt chiefly to social conditions already alluded to and to the greater prevalence of a dual standard of morals, a survival from ante-bellum days, which considers the crime of adultery more heinous among women than among men.

In regard to cruelty, it is doubtful whether physical cruelty has increased. There is ground for the assumption that in the absence of specific definitions of cruelty in many states, interpretation has inclined toward the view taken in the statutes of Colorado, that "cruelty may consist as well in the infliction of mental suffering as in bodily violence". It is reasonable to expect that with the increasing pressure of modern economic conditions upon the home marital discord should increase, and that the ostensible cause for divorce growing out of these conditions is likely to be cruelty or desertion. In cases of cruelty of the more refined and less brutal sort, the charge frequently will fall upon wives. It is probable also that the increasing desire on the part of women to avoid offspring and the consequent fear of con-

ception is an increasing cause of infelicity, which is more likely to register its effects under the cause of cruelty than any other. It may likewise result in increasing adultery and desertion.

The great mobility of labor due to social production and the facility with which employment may be secured has made it easier for husbands to desert their families; but this has been accompanied by an increasing readiness with which women may become self-supporting and they have not been slow to take advantage of the opportunities thus afforded when home conditions have become burdensome and domestic relations unhappy. This fact serves as a partial explanation at least, for the increase of divorces granted to husbands on the ground of wives' desertion.

The large number of divorces granted to childless husbands and wives greatly exceeding the number in which children are involved is usually cited to demonstrate the failure of childless marriage. There is doubtless much significance in this opinion, but as argument it is hardly conclusive. It is possible, and in numerous instances, we are sure, actually the case, that this is putting effect for cause. Voluntary control of conception defers births indefinitely and if discord arises, is likely to prevent them altogether. Childlessness is, therefore, often due to infelicity, rather than infelicity to childlessness.

The large percentage of cases in which children are involved in divorces granted to both husbands and wives for cruelty and drunkenness, seems to indicate clearly that the presence of children often determines the action of the libellant in order to protect them from danger or disgrace.

From the meagre data in regard to occupation of divorced husbands the Census Report ventures to make but one very general and conservative deduction, namely: "that a large proportion of the persons obtaining divorces come

from those occupations in which a large proportion of the people is engaged".[1] That divorces are relatively more numerous in certain professional and well-to-do classes than in others is as clearly established by the returns.[2] These facts coincide with our general method of interpretation. In those classes upon which the greatest number of disturbing forces play, naturally the greatest percentage of broken families is to be found. Among industrial and mechanical classes and in the wage-earning groups, conservatism is more likely to prevail and changes are slower in producing their results.

The divorce rate among the various classes, as it is among the various localities, is the resultant of contemporary forces.

[1] Report of 1908-9, pt. i, p. 44.

[2] *Cf. supra*, v, p. 93 *et seq.*

CHAPTER XIV

Tendencies and Probable Results

The primary object of this monograph is achieved in the description of divorce as a social fact and in the interpretation of the rising divorce rate, in continental United States during the period under investigation, upon the basis of social causation. But some, perhaps, who read the preceding chapters will ask, Will the family survive? Do present indications point to its utter annihilation? In order to answer these questions and to show that the very forces which have produced the high divorce rate are the very ones to which we must look for the salvation of the family of the future, a few inductions which grow out of the method of interpretation employed are recorded in this chapter. In so far as these conclusions may be regarded as prophetic forecasts, it should be borne in mind that they are based upon the action of certain forces which have operated in the recent past to produce, in marital conditions, the situation of the present, and which, if undisturbed, would tend to produce certain definite results in the future. But society is highly kinetic, so that before it becomes adjusted to one set of altered conditions other changes may arise to disturb anew its equilibrium. It would seem unlikely, however, that another period should witness such a combination of radical and far-reaching changes, mental and material, which could bear as directly upon the family as those which have taken place in the last half of the nineteenth century.

A PROBLEM OF ADJUSTMENT

Our effort has been to show that the period of the rapid rise of the divorce rate has been one of transition; that the phenomena we are studying are due in a large measure to the fact that the world moves, and that it moves forward. No one, we think, will question the ultimate advantage to society of the largest possible achievement in industrial efficiency, in individual and social freedom, and in ethical culture. These unquestionably minister to human welfare and to the growth of personality. They make for the enlargement of life. They are elements of social solidarity, not of social degeneracy. Consequently, the greater the achievement the larger the good. The difficulties arise, not out of the nature, but out of the rapidity of the movement. Velocity creates friction. Developments have been so rapid as to throw society out of adjustment in many of its aspects.

The phenomena here exhibited are the result of a process which Professor Patten describes as the transition from the "pain or deficit economy" to the "pleasure or surplus economy". In the former "the traditions and experiences of men were moulded out of the general menaces to life and happiness". In the latter, "improvements in the environment will construct a new basis for civilization by lessening deficit and destroying the old status between men and nature".[1] He continues:

> It is not however to be assumed that the transition to a pleasure economy is an easy one. On the contrary, it is a most difficult process and one fraught with many evils and dangers. So many of the fundamental ideas, ideals, and impulses of the race lose their efficiency through the change, that mankind seems almost without a rudder to guide it through the new difficulties . . . Individuals as well as nations show the

[1] *The New Basis of Civilization*, p. 10.

deteriorating influence of pleasure as soon as they are freed from the restraints of a pain economy. The tendency, however, is an evil that belongs only to the period of transition. A nation after undergoing the severe discipline of an unfavorable environment, suddenly finds itself transferred to a new environment where there is an abundance of utilities and no fear of enemies. The old safeguards to character are inadequate and it takes a long time to construct a new series of safeguards suited to the new conditions.[1]

This principle is as applicable to institutions as it is to individuals and to nations. Precisely this condition prevails in reference to divorce. Many old restraints have been, and are being, removed and new ideals are in the process of formation. Before external restraints have been thoroughly replaced by internal regulative principles some deterioration is more than likely to result, but in the end, a new adjustment will be established and the family will be much improved by the change.

It is no more surprising that there should be disturbances in domestic circles, as a result of these transitions, than that there should be turmoil in industrial and religious circles. Indeed it would have been strange if such revolutionary changes had not been accompanied by some radical results. Increased divorce, therefore, appears clearly in the light of an effect rather than a cause. It is one of the "costs of progress". It is not necessarily a sign of family deterioration.

Such is the conclusion of Ambassador Bryce, after a careful survey of American social conditions. He says: "On the whole, therefore, there seems to be no ground for concluding that the increase of divorce in America necessarily

[1] Theory of Social Forces, *Annals of the American Journal of Political and Social Science*, Jan., '06, pp. 76-7.

points to a decline in the standard of domestic morality, except perhaps in a small section of the wealthy class, though it must be admitted that if this increase should continue, it may tend to induce such a decline ".[1]

History and experience unite to teach us that, when the causes are not evil in themselves, but rather those consequent upon readjustment to improving conditions, they are not necessarily permanent. This is happily the case in reference to divorce. " The whole human family is moving out of an old, worn-out social, economic and theological house into a new one and family jars are bound to result." [2] But when once established in the more agreeable and commodious quarters, domestic life will be happier and more wholesome and friction will tend to diminish. The net result of the modern movement will be to place marriage upon a better basis with larger guarantee of its permanency.

The question of stability then is chiefly one of adjustment. It is not only futile but highly undesirable to seek to check the processes of evolution. To attempt to dam the stream without providing a waste-weir is only to compel an overflow, and the formation of new, and perhaps destructive, channels. The problem is one of improvement or construction of proper channels. The reactionary attempts in our day to increase ecclesiastical and legal restraints, in order to over-balance internal pressure, is misdirected energy and invites moral disaster. Arbitrarily to diminish the number of divorces under existing conditions would be to increase immorality and crime. The proper point of attack for those who wish to check the tide of divorce is the causes rather than the results. Improvement in general

[1] *Studies in History and Jurisprudence*, p. 850.

[2] O'Hare, " Is Divorce a Forward or a Backward Step," *The Arena*, April, 1905, p. 414.

conditions of social life and the facilitating of the adjustment of the family to modern conditions will be of real value in lessening the divorce rate. Repressive measures are likely, therefore, to do more harm than good.

THE GOAL OF SOCIAL EVOLUTION IN RESPECT TO THE FAMILY

Nothing has appeared in this investigation to shake our confidence in the ultimate triumph of the monogamic family. So great is the fear among reformers and superficial observers that present divorce statistics indicate the ultimate disruption of society, that a few reassuring facts should be pointed out bearing upon this subject.

After a somewhat exhaustive study of the evolution of the family in its various forms, Mr. Spencer sums up his conclusions as follows:

> The monogamic form of the sexual relation is manifestly the ultimate form; and any changes to be anticipated must be in the direction of completion and extension of it. . . . Future evolution along lines thus far followed, may be expected to extend the monogamic relation by extinguishing promiscuity and by suppressing such crimes as bigamy and adultery. Dying out of mercantile elements in marriage may also be inferred. After wife stealing came wife purchase; and then followed the usages which made and continue to make, considerations of property predominate over considerations of personal preference. . . . Already some disapproval of those who marry for money or position is expressed; and this, growing stronger, may be expected to purify the monogamic union by making it in all cases real instead of being in many cases nominal. As monogamy is likely to be raised in character by a public sentiment requiring that the legal bond shall not be entered into unless it represents the natural bond; so, perhaps, it may be that maintenance of the legal bond will come to be held improper if the natural bond ceases. Already increased facilities

for divorce point to the probability that whereas, while permanent monogamy was being evolved, the union by law, (originally the act of purchase) was regarded as the essential part of marriage and the union of affection as the non-essential, and whereas at present the union by law is thought the more important; there will come a time when the union of affection will be held of primary moment and the union by law as of secondary moment ; whence reprobation of marriage relations in which the union of affections is dissolved. That this conclusion will be at present unacceptable is likely—I may say certain. . . . Moreover with an increase of altruism must go a decadence of domestic dissension. Whence, simultaneously, a strengthening of the moral bond and a weakening of the forces tending to destroy it. So that the changes which may further facilitate divorce under certain conditions are changes which will make those conditions more and more rare.[1]

We have quoted somewhat at length, because these predictions made thirty years ago, toward the beginning of the period we are investigating, describe with rare accuracy the exact process we are witnessing. By virtue of the nature of the causes assigned as chiefly responsible for the rapid rise of the divorce rate during the transition period, once their legitimate results have been produced, they will become elements of stability and social solidarity. Marriage contracted upon the basis of mutual attraction and choice, of companionship, of reciprocal rights and privileges, and of an equal standard of morals, is far more likely to survive than the coercive marriage with its inequality, economic dependence and dual standard of morals.

These improved conditions will foster the further development of life-long monogamy as "the only relation

[1] *Principles of Sociology*, vol. i, pp. 764-6.

that can be thought of as meeting the full claims and obligations of personality ".[1]

Furthermore, the time which Mr. Spencer predicted " when the union of affection will be held of primary moment " is at hand, and we witness " the reprobation of marital relations in which the union of affection is dissolved ".

There is no danger that romantic affection and all the finer sentiments associated with ideal married life to-day, evolving through long ages of the developing human consciousness, will disappear or become less effective. Men and women will continue to love, court, and marry, and the " free trothplight " of equals will increase the probability that they will " live happily ever afterwards ". Mona Caird declares:

> The husband and wife of the future will no more think of demanding subordination, on the one side or on the other, than a couple of friends who had elected to live together would mutually demand it. That, after all, is the true test. In love there ought to be *at least* as much respect for individuality and freedom as in friendship. Love may add to this essential foundation what it pleases; but the attempt to raise further structures without this as a basis, is to build for oneself a castle in the air. It cannot last and it does not deserve to last.[2]

That these somewhat ideal conditions will be fully achieved in the immediate future is not to be expected, but such is the nature of the forces which are producing present results, that in their ultimate effect, they will tend to make divorce more rare, is certainly clear. Present tendencies,

[1] Smyth, *Christian Ethics*, p. 263.

[2] *The Morality of Marriage*, p. 145.

therefore, do not mean the disruption of the family. They reveal the struggles of adjustment antecedent to more wholesome conditions.

The permanency of marriage rests neither upon the wife-ownership by the husband nor upon the external coercive power of the state. The fear that, allowed freedom of choice, women will refuse matrimony and motherhood is groundless. Natural history furnishes no suggestion of such conditions among the females of any other species. Primitive society offers no example. On the contrary, the evolution of the finer sentiments of affection under the highly unfavorable conditions of the past, suggest the possibilities of the superlative power of affection under favorable conditions. Love is a far more powerful and permanent element than force. Freed from any compulsion, physical, economic or legal, women, on the ground of a purely voluntary affection will be willing and desire to enter into marriage as their normal life condition and with far greater prospects that the union will be happy and lasting. On the basis of mutual respect and affection the chances of p r-manency are greatly enhanced. This reasoning is abundantly supported by facts.

Two generations have witnessed such transformations in economic, social, ethical and religious conditions that, practically speaking, every avenue to freedom for women has been opened, and every opportunity to avoid or to escape the marriage state has been offered; but no corresponding stampede has taken place. While marriage in some countries has declined, it has maintained a rate, in the United States, equal to that of the growth of population, and in the last decade has surpassed it. In Great Britain the slight decrease in the marriage rate is not due to the employment of women as will be shown presently.

A glance at the employment conditions will be suggestive.

Here the remarkable fact confronts us, not that so many women, but that so few, have actually entered gainful occupations. Compared with the increase of opportunity, the increase of women workers is surprisingly small. From a comparison of the Federal Census Reports for 1870 to 1900,[1] we find that in this period of the greatest economic activity, while the female population increased 14,325,717, the number added to the employed was only 3,493,607, and the percentage of those engaged in gainful occupations to the total female population had only risen from 13.1 per cent to 18.8 per cent, a gain of 5.7 per cent.

If these facts are taken in comparison with the conditions in England, the situation is still more surprising. Miss Collet, in her report to the British Board of Trade in 1894, in respect to the employment of women, says:

> The current view that women's employment is rapidly extending and that women are replacing men to a considerable extent in industry is not confirmed. On the whole the proportion of women who are returned as occupied remained practically stationary in the decade 1881 to 1891. The employment of married and elderly women has, on the whole, diminished and the employment of women in casual occupations has also declined. There has been an increase in the employment of women and girls under twenty-five which has, however, been concurrent with a similar extension of the employment of young men and boys.[2]

And Miss Hutchins declares, that "the proportion of women occupied, to the female population, according to the census report (1901) has slightly fallen and that the proportion of women occupied to men occupied has also

[1] *Cf. supra*, x, p. 169.

[2] P. 71.

slightly fallen ".[1] Thus the tendency detected by Miss Collet in the preceding decade is confirmed.

Women are not abandoning wifehood and motherhood, and are not likely to do so, though they may marry later and rear fewer children. Potential employment acts in myriad instances to secure for them better treatment in the home and renders it less likely that they will resort to the open opportunity.

GREATER FREEDOM OF DIVORCE

With the increasing recognition of the civil-contract theory of marriage and the growing appreciation of individual rights, there is destined to come greater freedom of divorce. Coercive maintenance of voluntary marriage, where all natural ties have been severed, is coming to be regarded with the same degree of abhorrence, as we now look upon coercive marriage in the past, whether by wife stealing or wife purchase, or the later forms of *manus* or husband ownership. The dissolution of such loveless marriages is regarded as less immoral than their continuance. The enlightened consciousness rebels against compulsion in sexual relations, regarding it as a species of rape as revolting within the marriage bond as it is without.

The probable immediate result of a condition of greater freedom of divorce will be a further rise in the divorce rate. History testifies abundantly to the abuse made by sudden and unrestricted liberty conferred upon certain classes, although the principle upon which the liberty is conferred is ideal. The reconstruction period following the Civil War is a classic example. There is no reason to suppose that greater liberty in divorce would not be abused. This would be true especially among those classes, always

[1] *Journal of the Royal Statistical Society*, 1904, p. 479.

to be found in a complex and heterogeneous society, even of the highest culture, to which the better sentiments and the higher ideals do not appeal. Persons of this character are often to be found in circles where, for wealth or social standing, they are particularly conspicuous.

There would be another probable result. Professor Willcox cites the passing of the divorce law of 1884 in France as an example of the result of sudden change of law in favor of divorce.[1] Previous to the enactment of the law *separations de corps* averaged about three thousand per annum. The law went into effect July 27, 1884. By the end of the year 1,657 divorces were granted. In the following year divorces reached 4,227, while the separations were still above 2,000. In his book published in 1883, Bertillon predicted the result of the law. He says:

In the year which will follow the promulgation of the law, we shall see a high number of divorces. Then the number will diminish from year to year until it reaches its normal level, which will be a little above the actual level. . . . After having been numerous the first year and after having diminished rapidly the following years, at a given time they will cease to become more rare and will take up the upward march which separations have followed since 1837.[2]

Professor Willcox elaborates the reasoning upon which these predictions are based as follows:

A large number of couples in France as everywhere else are living in estrangement and separation. Some have formed new and illegal unions. Some have obtained a decree of separation, but as this would not legalize a second marriage, others

[1] *The Divorce Problem*, pp. 56-7.

[2] Bertillon, *Étude Démographique du Divorce*, p. 102.

have deemed it a superfluity. Then a divorce law is passed and thousands who have already obtained a separation, have the decree converted into a divorce; other thousands now see a reason for going to court, where before none existed. After a few years this current will cease; all who have long desired a divorce will have obtained it and only the new cases will be carried into court.[1]

Material for the verification of these predictions, not available when Bertillon wrote, or when Professor Willcox published his book is now at hand. The only discrepancy is in the shorter period of decrease. In 1886, the number of divorces fell from 4,227 to 2,950. The following year, instead of showing further decrease as predicted, shows a gain, the number being 3,636. Since 1887 the increase has been steady and rapid, the number being 10,938 in 1907.[2] Had not the causes we have assigned for the rapid rise of the divorce rate in general become increasingly operative during this period, Bertillion's estimate would have been more nearly approximated.

It is probable, therefore, that any considerable removal of present restrictions would be accompanied by similar results. Add to this the probability of abuses of a "lawless individualism", as previously suggested, and for a time, following such changes the rate of divorce would be abnormally high. It is not likely, however, that changes will be so rapid as to produce any phenomenal results.

As to ultimate results, we believe the situation is more hopeful for the permanency of the family. The evolution of monogamy and the growth of the affections essential to ideal, life-long unions, has been accomplished under great

[1] *Op. cit.*, p. 57.

[2] *Cf. Annuaire Statistique de la France* or *Statesman's Year Book.*

difficulties. Conscious efforts to facilitate these processes have not always been wisely directed. Montaigne said:

> We have thought to tie the nuptial knot of our marriage more fast and firm by taking away all means of dissolving it; but the knot of will and affection is so much the more slackened and made loose by how much that constraint is drawn closer; and, on the contrary, that which kept the marriages at Rome so long in honor and inviolate was the liberty every one who so desired had to break them.[1]

Society took a long step in the direction of happiness when marriage became a matter of mutual consent; when no marriage was valid unless freely entered into by both parties. This is the bulwark of modern marriage. The state abhors the thought of forcing any individual into unwilling conjugal relations. "Force or fraud" is sufficient for annulment of marriage in almost every state in the Union. But no sooner is this freedom of choice exercised, and the marriage ceremony performed, than the instincts to which may be safely entrusted the formation of the union, are deemed inadequate to safeguard its continuance and they must be reinforced by the state. Theoretically this "reinforcement of the will and affection" by the state, should affect a perfect and indissoluble union. But in actual experience, it often happens that the legal bond is substituted for the natural. As a result, affectionate regard for each other's feelings and interests is often replaced by an attitude of authority on the part of the husband and consequent rebellion on the part of the wife. The sympathetic attention which fostered selection and created the dreams of happiness is discontinued and conjugal love declines. The gradual removal of legal restraints will throw mar-

[1] *Essays*, vol. ii, p. 66 (ed. by Hazlitt).

riage back upon the resources of mutual affection and choice; upon those fundamental instincts of mating which have existed from the infancy of the human race and which have constantly tended to produce a higher and more permanent relation.

When the husband comes to realize that the only power by which he is to retain his wife is that by which he won her, he is not likely to assert an authority and assume an attitude repugnant to her, but will continue to pay deference to her wishes and concede to her the responsibility for her own personality. When the wife, in turn, realizes that she may not call upon legal aid to retain her husband's affection, she will endeavor to maintain the qualities which made her attractive to him before marriage. Such an attitude on the part of married persons does not guarantee congeniality nor annihilate the external difficulties which beset marriage, but it does increase immensely the probability of permanency, and conjugal affection will have far greater chance of survival. Spiritual ties are stronger than legal. Thrown upon these resources there will be the largest possible opportunity for the realization of the social ideal: a permanent monogamous union, a motherhood of choice and a parenthood of affection.

Those who value the letter above the spirit and who consider the legal form of greater consequence than the actual relation will fear to make the experiment of trusting the perpetuity and culture of the race to the instincts produced through the long processes of evolution in regard to the family and will continue to seek to control natural forces by the use of artificial means.

THE FUTURE OF THE FAMILY

Both the method and the content of our investigation have strengthened the proposition that the family is a pro-

duct of social experience. The present form, as well as the ideals which govern it, are the product of social forces at work within society. Having its origin in the inherent nature of human beings, it does not depend for its growth or continuance upon external authority. It is a cultivated product only to the extent to which purposeful training facilitates or directs its growth, or enhances the value of its product. If the institution rested upon an artificial basis, its perpetuity might be a matter of uncertainty, but "the perpetuity of the race involves the mating of men and women and the perpetuity of an improving race involves the persistence of sentiments and affections that have been evolved through ages of enlarging life, of widening and deepening consciousness".[1] We are, therefore, dealing with phenomena as permanent and as extensive as the race. As long as the race survives human mating will survive and the family will endure.

We may sum up tersely our generalizations in a threefold classification: the form, the function and the duration of the family of the future.

The single pairing family will persist. It will be founded freely upon the natural basis of "mutual attraction and preference". It will be entered into and perpetuated by choice. Subordination and domination will be eliminated. It will be the voluntary union of one man and one woman, prospectively for life on a basis of mutual respect, rights and privileges. An approximate equality of actual or potential economic opportunity will overcome sex-dependence and an equal standard of morals will minimize sexual immorality. Theoretical monogamy will tend to become actual monogamy.

The function of the family will consist in the perpetua-

[1] Giddings, *Twentieth Century*, March, 1906, p. 18.

tion and education of the race. Economic burdens will be lightened. A wifehood of choice and a motherhood of privilege will insure not more numerous but better born children. The higher education and more systematic development of women will result in the better training of the youth. The state may safely be entrusted with the problem of secular education and the church with the religious instruction, but the home will continue to be the only school adequate for the development of strong personality and the attainment of life in all its highest manifestations.

The duration of the monogamous union tends constantly to be "until death". As greater stress is laid upon the real than the artificial bond, greater freedom to break the artificial, when the real has ceased to exist, is inevitable, but the ultimate effect will be, not to increase divorces, but to make them more rare. Economic development, social progress and ethical culture, antagonistic to the ancient order, when better adjustment has been secured, will work for social solidarity and the permanence of free institutions. In this the family will share fully. Mistakes, unavoidable in this sphere as in all others, will not be irremediable. The homes which abide will be happy homes and the sum-total of human happiness and well-being will be increased.

That these conditions will be realized even approximately in the near future is not predicted. That society composed of imperfect human beings can ever reach a perfect adjustment is impossible. But that these forces are at work in our day within the social order, struggling to produce a more ideal condition in family life, we believe, is apparent to the thoughtful student of society.

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